DEC 13 1895
JAMES H. McKENNEY,

Supreme Court of the United States.

OCTOBER TERM, 1895.

No. 604.

PETITION FOR WRIT OF CERTIORARI.

WILLIAM STARLING
VS.
WEIR PLOW COMPANY
AND
WILLIAM S. WEIR.

BRIEF IN SUPPORT OF PETITION.

WILLIAM STARLING,
Petitioner.
PEIRCE & FISHER,
Counsel.

Bulletin Show Print, Chillicothe, Ill.

89 United States Circuit Court of Appeals for the Fifth Circuit.

I, James M. McKee, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing 88 pages, numbered from 1 to 88, inclusive, constitute a true, full, and perfect transcript of the certificates of the said United States circuit court of appeals in the case of The Southwestern Railroad Company, appellant, *vs.* The Central Railroad & Banking Co. of Ga., The Farmers' Loan & Trust Company, The Central Trust Company, *et al.*, appellees, No. 222, November term, 1893, as the same remains upon the files and records of said United States circuit court of appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of New Orleans, this 30 day of June, A. D. 1894.

JAMES M. McKEE,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

Endorsed on cover: Case No. 15,632. U. S. circuit court of appeals, fifth circuit. Term No., 748. The Southwestern Railroad Company, appellant, *vs.* The Central Railroad and Banking Company of Georgia *et al.* Filed July 9th, 1894.

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Petition for Writ of Certiorari. William Starling vs. Weir Plow Company and William S. Weir.

BRIEF IN SUPPORT OF PETITION.

BRIEF HISTORY OF THE CASE.

(A) The petition for the writ of certiorari seeks to bring before the Honorable, the U. S. Supreme Court for review the decision of the Circuit Court of Appeals for the Seventh Circuit in the chancery cause suit entitled *William Starling, Appellant, vs. Weir Plow Company and William S. Weir, Appellees.*

In the Circuit Court below, the suit was originally instituted for infringement of Letters Patent No. 154,293

granted to me, viz., William Starling, August 18, 1874, for improvement in sulky plows.

The validity of claim 1 of said patent No. 154,293 has been drawn in question and brought to the attention of various judicial courts, as follows:

(B) *First.* Minnesota Circuit. Action at law (jury being waived) for license fees. Invalidity of the patent pleaded and pleading allowed. Verdict for plaintiff. Nelson, J.; February 8, 1887.

Starling vs. *St. Paul Plow Works*, 29 Fed. Rep. 790.

Second. Minnesota Circuit. Motion for new trial on newly discovered patents, etc., in suit (1). Motion overruled and judgment rendered. Nelson, J.: Oct. 10, 1887.

Starling vs. *St. Paul Plow Works*, 32 Fed. Rep. 290.

Third. U. S. Supreme Court on writ of error in suit (1). Motion to dismiss for lack of statutory sum in controversy. Motion denied.

> "But the questions whether that patent was valid "and whether it had been infringed were put in issue "by the pleadings and decided by the Circuit Court." May 14, 1888.

St. Paul Plow Works vs. *Starling*, 127 U. S. 376.

Fourth. Supreme Court on writ of error in suit (1).

Decision on the merits, affirming the rulings of the lower court as devoid of error. May 11. 1889.

St. Paul Plow Works vs. *Starling*, 140 U. S. 184.

(C) *Fifth.* Illinois Circuit. Bill to restrain infringement of patent. Dismissed because of invalidity. Blodgett, J.: Aug. 20. 1891.

Starling vs. *Weir Plow Company, et al.*, 49 Fed. Rep. 637.

Sixth. Illinois Circuit. Petition for rehearing in suit (5). Petition denied. Blodgett, J.: Aug. 28, 1891. Decree entered Oct. 21, 1891.

Starling vs. *Weir Plow Company, et al.* Not reported in Fed. Rep.

Seventh. Circuit Court of Appeals, Seventh Circuit. Appeal from suit (5). Findings below affirmed. Oct. 27. 1892.

Starling vs. *Weir Plow Co., et al.*, 53 Fed. Rep. 119.

Eighth. Illinois Circuit. Action at law for infringement. Judgment of not guilty on basis of suit (5). Blodgett, J., Aug. 20. 1891.

Starling vs. *Peoria Plow Co., et al.* Not reported in F. R.

Ninth. Illinois Circuit. Bill to restrain infringement of patent. Relief denied, basis of comity, because of decision of the Court of Appeals in suit (7). Grosscup, J.: Nov. 26, 1894.

Starling vs. *Deere & Co. et al.*

(Exhibit annexed to petition herein).

BRIEF IN SUPPORT OF PETITION.

In the preparation of a brief in this case I beg the indulgence of this Honorable Court while I, as briefly as is possible, outline some of the salient features of the case.

The first claim of patent No. 154,293 is for a combination of elements clearly set forth in the specification.

The claim is for the:

"Crank-bar (K) combined with the plow-beam (N), "lever (L) and axle (A), as and for the purpose set forth, "so that the horses are made to raise the plow out of the "ground."

In the case of Starling vs. St. Paul Plow Works, 29 Fed. Rep. 790, the Court (Nelson, J.) after a very careful analysis of the first claim of the patent, construes it as having these characteristics:

Judge Nelson construes the first claim.

" . . . The plow is thus locked either in the ground "at any desired depth or up at any desired height, and in "practical operation, when raising the plow up the point "comes out of the ground first. . . . The first claim is

"for the combination of the crank-bar, lever, plow beam, "and axle, for the purposes set forth, so as to enable the "horses to pull the plow out of the ground. This is done "by the adjustment of the lever in the notches of the curved "bar."

On the petition for a new trial, 32 Fed. Rep. 290, his honor says:

" . . . By this device and manner of construction "and bolting the plow can be locked either in the ground at "any depth or up at any height at the will of the driver, "and in the operation of raising the plow the point comes "up first. By means of the lever the point turns up and "the horses are made to raise the plow out of the ground."

Defendants' expert witness construes the first claim.

William S. Bates, the defendants' expert witness in the case at bar, defines the first claim of patent No. 154,293 as follows:

"The sulky plow set forth in the patent is one having an "arched axle, to which the wheels and tongue are attached. "There is a crank-bar marked (K) in the drawing which at "one side is journaled to the axle and at the other side "has an eye which fits over the wheel spindle at that side, "so that the crank-bar may play up and down. A spring "lever marked (L) is rigidly secured to the crank-bar and "extends upward by the side of the driver's seat. The lever "plays along the notched sector and is retained in any posi-"tion in which it may be set by its engagement with the "notches of the sector. The plow beam is journaled on the "crank-bar so that by working the lever the operator may "raise or lower the plow and secure it at any desired point, "either in the ground or out of it, without stopping the "machine or getting off the seat. It is the combination of

"these parts operating in this way which forms the subject "matter of the first claim of the patent."

Record, page 64.

See also cross examination.

Record, pages 74, 75.

See also deposition of defendants' witness, Levi Roadhouse.

Record, page 90.

See also deposition of defendants' witness, D. C. Templeton.

Record, page 93.

Defendants' counsel construes the first claim.

The defendants' counsel in his brief in the Circuit Court of Appeals says that the court (Blodgett, J.) in his "definition of this patent . . . omits . . . "*Third*. The actual operation of the hand "lever (L), which, as described in the specification, is a guage lever and nothing else."

Counsel's brief, page 3.

". . . This lever is simply and only a guage lever to "hold the plow to any running depth to which it may be "adjusted, so as to produce uniform plowing."

Counsel's brief, page 4.

". . . These considerations afford an unassailable "demonstration that the structure and organization of

"the Starling plow is, as stated in the specification, one in "which the hand lever (L) is a guage lever only, so as not "to disturb the running depth at which the plow has been "*adjusted*, and at which it *is locked by the hand lever* (L)."

Counsel's brief, page 6.

We see by these quotations from Judge Nelson's opinion, and from the testimony of every one of the defendants' three witnesses, and from the quotations from counsel's brief, that the combination of the first claim of the patent No. 154,293 includes a lever for the purpose of raising and lowering the plow, and that it is a guage lever, and that it thus regulates the depth of the furrow, and that it is a locking lever, holding the plow firmly in any position to which the lever may be adjusted, and that the depth of furrow may be changed at will by the driver while the machine is in motion, without stopping the team or the driver leaving his seat, and that when raising the plow out of the ground by the lever (L) the point of the plow is raised first and the horses are made to draw the plow out of the ground on an incline.

Added characteristics.

If we were to include the testimony of complainant's witnesses we should add other distinguishing and valuable characteristics to those enumerated.

The plow can be adjusted so as to obviate the friction on the sole of the plow, thus causing a lighter draft on the team than a walking plow doing the same amount of work.

In all walking plows and some sulky plows there is a liability of the plow sliding when the pressure on the mould-

board is greater than the land side can resist, causing balks, a portion of the soil not being moved by the plow. In the plow of the patent in suit the land side has the same resistance as the walking plow, and, in addition, the resistance of the wheels before a balk could be made; the wheels would have to slide sideways—a practical impossibility.

In plowing land where there are tall weeds or standing corn-stalks the crank-bar bends the weeds and stalks forward, the furrow wheel holds them parallel with the furrow and the weeds and stalks are buried in the bottom of the furrow. This cannot be done by any walking plow, nor with any sulky plow unless it has a crank-bar extending to the furrow wheel.

When lubricating the journals of the wheels the combination of the first claim of the patent is used as a jack. By resting the plow on the ground and moving the lever (L) into one of the rear notches of the curved bar (M) the wheels are raised from the ground, and are then removed from the journals with ease. This is a convenience of some importance, as the journals should be lubricated at least every day when the plow is in use.

But we prefer, for the purposes of this motion, to rely upon the construction given by the Court in the Minnesota case, and the construction given to the first claim of the patent in suit by the witnesses and counsel for the defendants, as we believe such construction is sufficient to differentiate it from every patent set up in the answer or offered in evidence, or the patents introduced by Blodgett, J.

Having clearly defined the subject matter of the first

claim of the patent, we are prepared to analyze the decision of his honor, Judge Blodgett.

Appendix, pages 1 to 9, inclusive.

As the decision of Blodgett, J., was simply affirmed by the Circuit Court of Appeals, this opinion and decision is the one this Honorable Court is now asked to review.

The particular matters arising under this present petition have more direct relation to suit (5) in the foregoing array, since it was in the decision of that suit by the Circuit Court below that the errors arose which it is sought to review and correct.

The Mason Patent.

The first patent mentioned by Blodgett, J., and which he conceives anticipates the invention set forth in the first claim of the patent in suit, is the patent to William Mason, No. 85,838, of January 12, 1869.

Appendix, page 5.

As this patent was not set up in defendant's answer, or offered in evidence in this case in any way or manner, or even alluded to in the briefs or oral arguments by the attorneys for either party, it was clearly erroneous for the Court to base his decision upon this patent to support the defense of want of novelty.

In our petition for a rehearing (see Appendix, page 10) we set out these facts as one reason for the motion and that we had no opportunity to offer proof upon this patent, that

we could show that the Mason patent is radically different from complainant's patent, but the Court overruled the motion for rehearing, thus cutting off all opportunity of the complainant to defend his rights against what was introduced by the Court.

In taking an appeal to the Circuit Court of Appeals (see Appendix, page 16) we made a specific assignment of error as to this Mason patent, *and necessarily had to include it in the Transcript of Record.* We contended this was error, citing Sec. 4920, Revised Statutes.

Tease vs. *Huntington*, 23 Howard, 10.

Phillips vs. *Page*, 24 Howard, 168.

To avoid the force of these citations the counsel for the defendants, in his brief before the Circuit Court of Appeals, page 12, says:

"The Court having exercised its discretion and having "considered the Mason patent without the aid of experts, no "error can be assigned to the finding of the court for that "reason, *and as the Court did not find the plow of the "Mason patent to be a specific anticipation of the Star-"ling claim, no objection can be properly taken to its "being considered without being set up in the answer.*"

If the Court did not find the Mason patent to be a specific anticipation of the Starling claim, then he did not find any patent to be a specific anticipation, as he includes them all under one head and in the same paragraph. If counsel

is correct in the above quotation, *there was no finding by the Court to support the judgment*, and the Circuit Court of Appeals should have reversed the judgment.

We contend here, as we contended before the Circuit Court of Appeals, that it was error for the Court below to base his decision that your petitioner's patent is void for want of novelty because of this Mason patent that was never in the case until it was introduced by the Court below. This question whether this is error or not as yet remains undecided by any Court.

The Worrell & Rynerson Patent.

The next patent relied upon by the Court below to defeat your petitioner's patent is the Worrell & Rynerson patent of March, 1871.

Appendix, page 5.

This patent, like the Mason patent, was first introduced in the case by Blodgett, J.

It was not set up in the answer, nor was it offered in evidence, and no proof was taken as to this patent.

There are two patents to Worrell & Rynerson of March 28, 1871, No. 113,234 and No. 113,235, and his honor does not say which he conceives to be a "complete anticipation of complainant's patent."

In our petition to the Court below for a rehearing (Appendix, page 11) we set forth these facts and claimed that if granted an opportunity we could show by proof that the Worrell & Rynerson patents were radically

different from the patent in suit. But the motion was promptly overruled, thus cutting off all opportunity of your petitioner defending his rights against matter that was never properly in the case.

In our appeal to the Circuit Court of Appeals we made a specific assignment of error as to this Worrell & Rynerson patent (Appendix, page 17), and made the same citations and contentions as we did in respect to the Mason patent. The question whether this was error or not remains undecided.

We think if your petitioner's property, made so by the laws of his country, is to be destroyed, it should be for reasons more definite and proofs more positive than is contained in the vague allusion to a patent without number or date, as is shown in the *dicta* of his honor in this case.

The two remaining patents cited by the Court below as anticipating the first claim of the patent in suit, are the Owens patent of February 6, 1872, No. 123,505, and November 5, 1872, No. 132,772. (Appendix, page 11).

The Owens Patents.

These two patents were adjudicated in the case of *Starling* vs. *St. Paul Plow Works*, 29 Fed. Rep. 790, wherein it was decided that

"Neither of these patents have the combination of the "plaintiff for the purposes described in his patent, and do "not anticipate the invention."

Blodgett, J., in his opinion in the case at bar, referring to the St. Paul Plow Works case, says:

"The Court held properly, as I think, that the defendant "had by its answer in the case denied the novelty of the "device covered by the patent, and plaintiff had not replied "an estoppel under the license, proof upon the question of "novelty was admissible, and, under this ruling, proof of "the issue of several prior patents was heard and con-"sidered."

Appendix, page 3.

We see by the above quotation from his honor's opinion that the *issue*, viz., the novelty of patent No. 154,293, was the same in that case as in the case at bar, and these two Owens patents were set up in both cases as anticipating your petitioner's patent: *and the only two set up in the answer in the case at bar that are cited by the Court as being a complete anticipation of complainant's patent.*

His honor further says:

". . . And I think it but right to say that I think the "Minnesota case was properly decided upon the issues and "proofs made before the Court."

Appendix, page 4.

Thus we have the Circuit Court for the District of Minnesota deciding these two Owens patents do not anticipate the invention of the patent in suit.

We also have the indorsement of Judge Blodgett that *"the Minnesota case was properly decided upon the issues and proofs made before the Court"* in that case.

I think it is evident his honor would have followed the

decision of Judge Nelson in the Minnesota case had he not for some reason supposed that the proofs in the case at bar were larger in amount or different in effect from the proofs in the Minnesota case. He says:

". . . defendants have introduced in this case a large "amount of proof which was not offered in that case. . ."

Appendix, page 4.

"The Minnesota case is invoked here under a rule of "comity which prevails between the Federal Courts of co-"ordinate jurisdiction when a question which has been "decided in one is raised in another upon substantially the "same *facts*. If the *facts* in the latter case essentially differ "from those of the adjudged case, then the rule of comity "has no application, or its application is limited."

Appendix, page 4.

"While, therefore, this Court would be very glad to con-"sider the question of novelty as *res adjudicata* and follow "the Minnesota case, *it is plain that as the proofs in this "case differ from the proofs in that case we must examine "the question of novelty here upon the proof now presented "instead of resting upon the former decision.*"

Appendix, page 4.

As the Mason patent and the Worrell & Rynerson patent were not in evidence, there could be no proof presented by the defendants as to those patents.

As to the *amount* of proof in respect of the Owens patent: In the Minnesota case the defendants' three expert wit-

nesses and the plaintiff's two expert witnesses testified about these Owens patents, which is recorded upon thirty-four different pages of the printed record, many of the pages wholly devoted to these Owens patents.

See printed Transcript U. S. Supreme Court, St. Paul Plow Works vs. Starling, No. 329, Oct. Term, 1890.

In the case at bar, all of defendants' direct proof is contained in less than twelve lines of the printed record. Page 68.

So it appears the Court was for some reason laboring under a mistake as to the *amount* of proof defendants had introduced in this case which was not in the former case as regards the Owens patents.

Now as to the kind, quality and effect to be given to the defendants' proofs (for it seems the Court entirely ignored the complainant's proofs), Mr. Bates, the defendants' expert witness, says:

Defendants' expert construes the Owens patent.

"The Owens patent of 1872, No. 123,505, has an arched "axle, a crank-bar journaled to it, a plow "beam journaled on the horizontal portion "of the crank-bar, and a lever for raising or "lowering the plow by oscillating the crank-bar."

"This patent has Starling's entire combination *except "that there is no sector, and consequently the plow cannot be "secured at any point by means of the lever while the ma-"chine is in motion.*"

Record, page 68.

This securing the plow at any point by means of the lever is one of the essential characteristics given to complainant's combination by Mr. Bates (Record, page 64, previously quoted in this brief, page 2, and by counsel in his brief in the Circuit Court of Appeals, pages 3, 4-6, previously quoted in this brief, and by his Honor, Judge Nelson, 29 Fed. Rep. 790 and 32 Fed. Rep. 290).

And we see Mr. Bates testifies this Owens patent is wanting in this essential particular.

Judge Nelson decided this Owens patent was lacking in this essential characteristic, and, therefore, did not anticipate your petitioner's patent.

Counsel, page 6 of his brief in the court below, says:

Deficiencies of the Owens patent.

"The first Owens patent, No. 123,505, "*has the deficiencies pointed out by the "Court in the St. Paul case, page 793.*"

Counsel's brief, page 6.

Those deficiencies of the Owens patent pointed out by the Court, page 793, are as follows:

"The plow can be held at a certain elevated position, but "not locked in the ground. Neither will the lever raise the "point of the plow out of the ground, and the front device "running through the tongue will prevent the tilting of the "point of the plow when raising it out of the ground."

These deficiencies of the Owens patent pointed out by Judge Nelson, and admitted to be deficiencies by counsel

for defendants, are of vital importance. The lack of these distinguishing characteristics in the Owens plow is what causes it to be different and inferior to the Starling patent.

As to the remaining Owens patent Mr. Bates says:

"The Owens patent of 1872, No. 132,772, is the same as "the other Owens patent just mentioned, with the addition "that the crank-bar is extended forward so as to form a "lever on which the driver places his foot to assist in raising "and lowering the plow."

Record, page 98.

This comprises all of the defendants' direct proof in reference to these Owens patents.

The cross-examination of Mr. Bates (Record, page 78-79) emphasizes the fact that the Owens patents are radically different from the plow of the patent in suit.

If any further argument were needed to show that Blodgett, J., for some unaccountable reason, was laboring under an entire misapprehension in reference to this case to the great injustice and wrong of your petitioner, it may be found in the brief of counsel in the case of the *St. Paul Plow Works* vs. *Starling* on appeal before this Honorable Court, October term, A. D. 1890, No. 329.

On page 40 of brief for plaintiff in error L. L. Bond, Esq., says:

"Berthiaume supposed he had made a plow upon a new "design, but it will be seen that he was mistaken in this,

Counsel claims the Owens plow is different from the Starling patent.

"and that his improvements only relate to "construction of devices which are special "to his machine.

"The Berthiaume patent is shown (page 161) and it does "not require one skilled in the art to see at a glance that "the Berthiaume plow is the Owens plow.

"Berthiaume did what many another one has done in "attempting to improve a known machine; that is, he "simply went back to an older form instead of producing "a new one.

"If the machines of the plaintiff in error are Owens "plows, then the existence or non-existence of the license "is unimportant.

"If they are Owens machines they are not made under "the license. If the license is not in existence as a sub- "sisting one, then if the plows of the plaintiff in error are "Owens plows they cannot infringe the Starling patent. "*That the defendant's plows are not Starling plows, that "they do not infringe Starling's patent, and that they are in "fact Owens plows, is fully established by the evidence.*"

Here we see counsel contending that plows that were made subsequent to the date of the Starling patent could not infringe the patent *because they were made like the Owens patent plow.*

I believe it is a fundamental principle of patent law that a machine that would not be an infringement if made subsequent to a patent, could not be an anticipation if made prior to the patent.

That the proofs do not sustain the decision of the Court

in the case at bar I think is evident. In this connection it is significant that his honor does not quote the parts of the proofs upon which he bases his decree, nor does he point to the place in the record where such proof may be found.

Another grave error that the learned judge fell into, as we believe, is in reference to what is said in his opinion about raising the point of the plow first when raising it out of the ground. After referring to several patents that he claims as showing plows organized so as to raise the forward end of the plow-beam first, he then says:

Raising the point of the plow first.

"So that the *advantage* of first raising the point of the "plow instead of the heel in order that the forward move- "ment of the team would aid in running the "plow out of the ground, was well known in "the art long before the complainant's patent, *and although* "*the lifting devices of these old patents may not have been* "*the same as used by the complainant*, still the forward end "of the beam was lifted and the *advantages* of doing so well "understood before this patentee adopted his method. . ."

Appendix, page 7.

"For these reasons I conclude that the first claim of the "complainant's patent is void for want of novelty."

Appendix, page 8.

Here we see his honor recognizes that the raising of the point of the plow before the heel so that the horses may aid in running it out of the ground *is an advantage*. This then is a beneficial function of complainant's combination. We also see his honor *admits* the patents cited as being raised

point first do it by different devices than it is done by in complainant's combination.

We contended before the Circuit Court of Appeals that a patent is not granted for a result, and indeed cannot be granted for a result. We hold now as we did then that a patent can only be lawfully granted for the *means* or *devices invented to produce the results*. That while the results may have been produced many times before by other means, yet if the combination or devices are new and the results are useful the inventor of the new combination or devices is entitled to a patent therefor.

Fuller vs. *Yentzer*, 94 U. S. 288.

Coes vs. *Collins Co.*, 9 Fed. Rep. 905.

Palmer vs. *Gatling Gun Co.*, 8 F. R. 513.

Electric R. R. Signal Co. vs. *Hall R. R. etc. Co.*, 114 U. S. 96.

The Saltely Patent.

To show that his honor did not give this case the careful consideration usually given to cases of such importance, it is only necessary to refer to the Saltely patent cited by his honor as showing a plow that was raised point first.

The specification of the Saltely patent, page 1, second column, near bottom of column, says: "The horizontality of the beam at all heights is preserved by means of jointed rods V, by which its forward end is connected to the axle B."

This Saltely patent, like the Mason patent, was not set up in defendants' answer, nor was it offered in evidence in this case, nor was it even alluded to by counsel for either party in this case, and should not have been cited by the Court as any reason for the decree that your petitioner's patent is void for want of novelty.

The patent to Saltely, if it had been properly in the case, absolutely and specifically negatives the proposition that it shows a plow that is raised point first.

This assignment of error and our contention in reference thereto, remains as yet undecided.

His honor says:

"The defences relied upon are: 1. That the patent is "void for want of novelty. 2. That defendants do not "infringe. The material question in the case in my judg- "ment is as to the patentable novelty of the device in the "light of the state of the art as disclosed in the proof."

Opinion, Appendix, page 2.

Infringement Issue.

Thus we see there were two issues is the case. As to the question whether the defendants did infringe complainant's patent or not the Court declined to decide.

This was one of the main issues in the case. A large amount of testimony was taken upon this issue. A correct decision of this issue was and is of vital importance to your petitioner's rights, and we assigned this non-action by the Court below as error on appeal.

Appendix, page 19.

On page 32 of counsel's brief in the Circuit Court of Appeals we find as follows:

"Infringement. As this question was not considered ~~as~~ as
"passed on by the Court below, it is not necessary to con-
"sider it here. For if the Court should be of the opinion
"that there was error in holding appellant's patent to be
"invalid under the state of the art shown, the case will have
"to be remanded with instructions to the Court below to re-
"hear the case to consider and determine the question of
"infringement."

If the action of the Circuit Court of Appeals should have been as outlined by counsel and the case remanded for the purpose of determining the question of infringement the Court below might defeat your petitioner's right of action by deciding that defendants do not infringe.

This would necessitate another appeal with all its attending expenses and delay.

Surely justice does not require such long drawn out expensive litigation.

We think we were entitled to a decision of this question in the Court below, and when we appealed from the decision to the Circuit Court of Appeals and asked that Court to decide the question of infringement we think we were entitled to a decision of this question. This is as yet an undecided issue.

Inconsistency of the defence of want of novelty.

The proofs in the record show that the defendants requested a plow sent to them as a sample. In accordance with that request your petitioner took a plow to their shops at Monmouth, Ills., and explained it to them, and operated it in the

field at their request; the defendants then examined the patent No. 154,293, after which they requested a license to manufacture and sell under the patent, and offered to pay a royalty of two dollars and fifty cents for each plow made, and would bind themselves to make not less than three hundred the first year and not less than five hundred each subsequent year, and would advance five hundred or a thousand dollars on account.

See Record, pages 47, 48.

This testimony was not controverted.

The defendants, failing to procure a license, proceeded to make plows containing the first claim of the patent in suit. After a time William S. Weir, one of the respondents, procured a patent to be issued to himself for some minor details engrafted upon your petitioner's patent.

An examination of complainants' exhibit of defendant's plow (which defendants admit was made by them and sold to Thomas Brannon—see Record, page 61) and a comparison with the patent to William S. Wier, No. 190,652 (see Record, pages 258-262 inclusive), shows that neither of the two claims of the patent is used in the plows made by the defendants; further showing that the averment in the answer,

"That the sulky plows made by the defendant corporation "were made under the protection of letters patent granted "to William S. Weir."

Was intended as a fraud upon the Court and for the purpose of deception. And the fact that the complainant's

exhibit of defendant's plow has branded upon it, viz.: Pat. May 8, 1877; when there was neither of the two claims of said patent used in the plows they made and sold, showing that the defendants fraudulently branded the plow as being patented for the purpose of deceiving the public.

Mr. Weir's testimony in reference to this patent: "I do not remember exactly how it was, *because we never built very many of them.*"

Record, page 100.

We contended before the Circuit Court of Appeals that this action of the respondents was inconsistent with the defence of want of novelty.

Bostock vs. *Goodrich*, 21 Fed. Rep. 316.

That if they were not absolutely estopped from pleading this defence, their actions created at least a doubt of good faith in pleading the defence of want of novelty.

In defendants' answer (Record, page 10) we find:

The Weir patent a fraudulent defence.

"12. The defendants aver that sulky plows which the "said defendant corporation has made or "caused to be made and sold as aforesaid "have been made under the protection of letters patent of "the United States granted to the said William Weir, "which the said corporation had a right to use, which "patent will be offered in evidence."

At the taking of the testimony defendants refused to offer said patent in evidence and objected to complainant asking

any questions about said patent. (See objection; Record, pages 89-101.)

Now we come to the most remarkable portion of this very remarkable opinion, viz:

Remarkable language.

"I do not think the opinion of the Supreme Court any "more than that of the Circuit Court of "Minnesota can be quoted as a decision sus- "taining the validity of the patent."

Appendix, pages 8-9.

This is very remarkable language in view of the fact that the Circuit Court of Minnesota did decide that

"Neither of these patents have the combination of the "plaintiff for the purposes described in his patent, and do "not anticipate the invention."

The patents decided as not anticipating the invention were the

Hay & Freeman, No. 116,956, dated July 11, 1871.

Worrell & Rynerson, No. 120,560, dated October 31, 1871.

Charles N. Owens, No. 123,505, dated February 6, 1872.

Charles N. Owens, No. 132,772, dated November 5, 1872.

John Worrell, No. 134,121, dated December 17, 1872.

J. D. Harrison, No. 143,147, dated September 23, 1873.

But what is more remarkable still is the fact that his honor, in a former part of the opinion, endorsed this decision of the Circuit Court of Minnesota in these terms, viz:

". . . And I think it but right to say that I think the "Minnesota case was properly decided upon the issues and "proofs made before the Court."

Appendix, page 4.

And we have seen that the question of novelty was the issue in that case as it is in the case at bar, and that the proofs included the two Owens patents relied upon by the defendants in both cases.

But more remarkable still is the fact that the opinion in effect reverses the decision of the Supreme Court of the United States.

Viewing the case from any standpoint and the fact remains and cannot be hid or explained away, that here are two decisions, by two Courts of the United States of equal jurisdiction and authority, the issue in each case being as to the novelty of your petitioner's patent, and the decision in each case hinging upon the two Owens patents.

In the Minnesota Circuit the patent to your petitioner, No. 154,293, is held to be valid.

In the Illinois Circuit the same patent to your petitioner is held to be void.

This condition of things is intolerable, and tends to bring reproach upon our Courts.

To emphasize this anomalous condition the Supreme Court of the United States affirmed the decision of the Circuit Court of Minnesota, giving reasons therefor.

The United States Circuit Court of Appeals for the Seventh Circuit affirmed the decision of the Circuit Court of Illinois without giving reasons therefor, except so far as they endorse the reasons given by the Court below.

These conditions make it very clear that as this Honorable Court is the only tribunal having authority to decide between these conflicting decisions, this Court should grant the petition prayed for.

Opinion of Gross-cup, J.

The attention of this Court is called to the opinion of his honor, Judge Grosscup, appended to the petition. The decision we ask this court to review is being used to defeat my just claims, and without a hearing as to the merits of the case, and we are gravely told that we can appeal again to the Circuit Court of Appeals.

Your petitioner has become so impoverished by the litigation in defense of his rights that if the petition prayed for be denied it will be impossible for him to take any further steps to obtain justice.

Realizing that this brief has many faults, and is only

strong in stubborn facts perhaps too plainly stated to command the approval of this Honorable Court, yet we ask that it be accorded such consideration as the facts may merit.

Respectfully submitted.

WILLIAM STARLING,

Petitioner.

PEIRCE & FISHER,

Counsel.

Office Supreme Court U. S.
FILED.
DEC 13 1895
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States

OCTOBER TERM, 1895.

No. 604.

APPENDIX TO BRIEF

IN SUPPORT OF

Petition for Writ of Certiorari.

APPENDIX.

Opinion.

United States of America.

Circuit Court of the United States, Southern Division,
Northern District of Illinois.

William Starling,
v.
Weir Plow Company
and
William Weir.

Bodgett, J.

This is a suit charging the defendant with infringement of patent No. 154,293, granted August 18, 1874, to complainant for an "Improvement in Sulky Plows," and praying an injunction and accounting. Opinion, filed Aug. 20, 1891.

The plow described in the specifications and drawings of this patent, consists of a two-wheel sulky plow with an arched axle bent downwards towards each end, the spindle

for the right hand wheel being a horizontal projection from the portion so bent downward.

Pivoted upon the vertical part of the axle, just above the angle from which the right hand wheel spindle projects, is what the patentee calls a "crank-bar" which extends backward and transversely across, nearly from hub to hub, and is also pivoted to the lower end of the vertical part of the axle near the spindle of the left hand wheel; and the plow-beam is attached to the transverse part of this crank-bar near the middle of the bar by a jointed coupling, so that the plow-beam can rock upon its attachment to the crank-bar and the forward end of the beam be raised and lowered by rocking this crank-bar; a lever rigidly connected with this crank, or bail, extends upwards to the driver's seat, so that by the movement of this lever by the driver, the crank-bar may be rocked and the plow raised or lowered.

There are other features of the plow not now in controversy, which it is not necessary for the purposes of this case to describe.

Infringement is charged only as to the first claim which is:

1. "The crank-bar K, combined with the plow-beam N, lever L, and axle A, as and for the purpose set forth, so that the horses are made to raise the plow out of the ground?"

The defences relied upon are:

1. That the patent is void for want of novelty.

2. That defendants do not infringe.

The material question in the case in my judgment is as to the patentable novelty of the device in the light of the state of the art as disclosed in the proof.

This patent was before the United States Circuit Court for the district of Minnesota in *Starling* v. *St. Paul Plow Works* (29 Fed. R., 790) and (32 Fed. R., 290) and there in certain sense sustained.

That case was a suit-at-law, brought by complainant as owner of this patent upon a contract or license given by him to the St. Paul Plow Works, by which the licensee was permitted to manufacture and sell plows, made under this patent, within certain territory, for a royalty of $2.50 per plow. After the defendant in that case had made and sold thirty-five or forty plows under the license, notice was given to the patentee that the plows were unsatisfactory; that many of them had been returned as unserviceable, and that the licensee renounced the license and would thereafter manufacture plows of its own design. After this notice and renunciation of the license, the licensee made about 1,300 plows after what it called its own design, on which it refused to pay the royalty called for by the license, whereupon the patentee brought suit to recover his royalty or license fee, claiming that the plow designed and made by the licensee after the renunciation of the license contained the features covered by the patent.

The question properly in issue in that case was, whether the plow made by the defendant on which it refused to pay royalty embodied the features, or any of them, covered by the claims of the patent. The Court held properly, as I think, that the defendant had, by its answer in the case, denied the novelty of the device covered by the patent, and plaintiff had not replied an estoppel under the license, proof upon the question of novelty was admissible, and under this ruling, proof of the issue of several prior patents was heard and considered.

The plaintiff's patent has three claims covering different

features covered by patents of the device, and it is obvious that if the plows made by the defendant in the Minnesota case contained features covered by any of these claims, then, it was liable for a license fee.

The case differs, then, from the Minnesota case in two essential particulars: first, only one claim is in controversy here, while the whole patent was in controversy there, and second, defendants have introduced in this case a large amount of proof which was not offered in that case, and I think it but right to say that I think the Minnesota case was properly decided upon the issues and proofs made before the Court.

The Minnesota case is invoked here under a rule of comity which prevails between the Federal Courts of co-ordinate jurisdiction when a question which has been decided in one is raised in another upon substantially the same facts. If the facts in the latter case essentially differ from those of the adjudged case, then the rule of comity has no application, or its application is limited.

While, therefore, this Court would be very glad to consider the question of novelty as *res adjudicata* and follow the Minnesota case, it is plain that as the proofs in this case differ from the proofs in that case we must examine the question of novelty here upon the proof now presented instead of resting upon the former decision.

I do deem it necessary to analyze all the prior patents which have been put in proof in this case. It is enough, I think, to say that it clearly appears, from the proof, that crank or arched axles are old in the art, and that crank-bars, bails, or yokes, for the same thing is known by these different names in the art, as a means of raising or lowering

the plow-beam, were well known in the art prior to the plaintiff's patent.

A patent to William Mason, No. 85,838, of Jan. 12, 1869, for an "Improvement in Gang Plows," shows an arched axle with a frame to which the plow-beams were attached, and a crank-bar so arranged in connection with the frame that when the crank-bar was rocked by means of a lever at the driver's seat, the plow beams were raised or lowered. It is true this Mason patent shows two crank-bars, one under the rear and the other under the forward end of the frame to which the plow-beams were attached, both of which crank-bars were rocked by the lever, but the principle, or idea of a crank-bar operating with an arched axle and lever as a means for raising or lowering the plow beam is, I think, clearly developed in this patent.

In the Worrell and Rynerson patent of March, 1871, a plow is shown, with a bent or arched axle, and underneath the axle is pivoted two bars projecting to the rear of the axle, where their rear end is connected by a cross or transverse bar to which the plow-beam is attached, or as the specification says, "this transverse or cross-bar may be made a continuation of the rearward projecting arms." One of these arms so pivoted to the axle also extends forward of the axle and forms a lever by means of which the crank-bar may be rocked and the plow beams raised or lowered. The driver, from the location of the lever, rocking the lever with his foot instead of his hand as in the complainant's patent.

It is obvious, I think, that by merely bending this arm of the Worrell and Rynerson crank-bar, which extends horizontally forward of the axle, upward, so that the driver could operate it with his hand, it would be in function and

mode of operation the crank-bar and lever of the complainant's patent. And thus to bend the lever of the crank-bar upward to the driver's seat or where it can be reached and operated by the driver's hand instead of his foot is a mere mechanical change which would not involve invention.

The Owens patent of February 6, 1872; No. 123,505, and November 5, 1872, No. 132,772, also show a crank-bar or yoke, as it is called in those patents, to which the plow-beam is attached or hung, which yoke, when tilted or rocked by means of a lever extending up to the driver's seat, raises or lowers the plow beams.

We have in these four patents, as it seems to me, a complete anticipation of the complainant's crank-bar, and in all those patents the crank-bar co-operated with the arched or bent axle and a lever which rocked the crank-bar, to raise and lower the plow-beams, thus containing all the elements of the first claim of complainant's patent combined, operating and producing the same result produced by the complainant's combination.

It is true that in several of these older patents the crank-bar is encumbered with other auxiliary devices, but for the office performed by the crank-bar in complainant's patent, they are essentially the same as complainant's crank-bar.

It is true that the complainant states in his specifications and assumes to cover by his first claim the feature that, by the operation of his crank-bar and lever, the forward end of the plow-beam is first raised so that the plow is run out of the ground by the forward movement of the team. It is apparent to anyone at all familiar with the operation of plowing that it depends solely upon the location of the attachment of the plow-beam to the crank which determines

whether the forward end of the plow-beam will rise first when the crank is rocked so as to lift the plow-beam, and it does not seem to me a patentable device to so locate the point of attachment of the beam to the crank-bar as to secure this result.

It is also noticeable that Mr. Starling nowhere in his specifications or description of his device gives any instruction as to location of the attachment of the beam to the crank which will secure the lifting of the forward end of the beam first—undoubtedly any mechanic who wishes to construct his plow so that the crank when rocked in the right direction would lift the forward end of the beam first would simply attach the beam to the crank forward of the center of gravity of the plow when running in the ground—in other words, so locate it that the plow when working would offer more resistance behind than forward of the point of attachment.

The proof in the case also shows several patents on plows prior to the Starling patent where the plows were organized so as to raise the forward end of the plow-beam first. Among which are the Baker patent of December, 1860; the Frasier patent of April, 1861; the Sattley patent of February, 1864; the Davenport patent of February, 1864; and the Davenport patent of February, 1866—so that the advantage of first raising the point of the plow, instead of the heel in order that the forward movement of the team would aid in running the plow out of the ground was well known in the art long before the complainant's patent. And although the lifting devices of these old patents may not have been the same as used by the complainant, still, the forward end of the beam was lifted and the advantages of doing so well understood before this patentee adopted his method; and it certainly did not require inventive genius to apply to

any plow, at the date of complainant's patent, the idea of lifting the forward end of the plow-beam first in order to secure the aid of the team in running the plow out of the ground, and in any of these old bail plows that end could be secured by locating the bail forward of the center of resistance.

For these reasons I conclude that the first claim of the complainant's patent is void for want of novelty.

At the time this opinion was prepared the Court was not aware that the case of *Starling* v. *St. Paul Plow Works* had been taken to the Supreme Court and was pending there. But at the last April term, when the Court was about to enter a decree in accordance with this opinion, it was suggested that the Minnesota case had been argued and was then under advisement in the Supreme Court, and a request was made that the entry of the decree be postponed until the decision of the Supreme Court in the Minnesota case was announced, and the Court acted on that request.

I have since carefully read the opinion of the Supreme Court in the Minnesota case and find that the Court disposed of the case wholly on the basis of the contract; and does not touch upon the question of novelty farther than to say that the finding of the Circuit Court on the question of novelty was a finding on a question of fact which could not be reviewed—but the whole tenor of the opinion is to the effect that the defendant in that case was bound by its contract of license with the plaintiff and could not renounce its contract and proceed to manufacture a plow which embodied any of the claims of the plaintiff's patent and escape paying a royalty to plaintiff under its license.

I do not think the opinion of the Supreme Court, any

more than that of the Circuit Court of Minnesota, can be quoted as a decision sustaining the validity of the patent.

Bill dismissed for want of equity.

Petition for Re-Hearing.

Petition for Re-hearing, filed Aug. 28, 1891.

The court is respectfully asked to set aside the finding and decree in the above entitled causes and grant the complainant a re-hearing in both the same for the following reasons:

First. The William Mason patent of January, 1869, No. 58,838, referred to in opinion, was not pleaded or set up in evidence by either party, neither was there any allusion to it in the evidence of either party, It was shoved in with a lot of trash in the Peoria case, the last thing done, but no evidence was taken upon it and complainant supposed it was not worthy any attention or any evidence.

The complainant could have shown, had he been permitted, and if permitted can now show that the Mason patent above referred to is a frame or tongue hitch, the beam is an extension of the tongue and is above the axle; the beam and tongue are rigid. The plow is raised by three levers; two of the levers are connected by a rod; there is a slot on one of the levers to hold another one of the levers in place.

The plow has bottom friction which cannot be entirely taken off. When raised out of the ground it comes heel first, the front end of the tongue being the pivot or center of motion. It can not be locked in the ground; it will be thrown out on encountering rubbish or trash; therefore, a rolling cutter can not be used with it. There are no means, except as above stated, for regulating the depth of the furrow. In all these respects complainant's plow differs from the Mason. The complainant's patent has devices which lock the plow in the ground, which lock the plow out of the ground; he, therefore, uses a rolling cutter. His plow has

little or no bottom friction, the friction being transferred to the wheels. In these vital and essential particulars the plows are different. The point of the Mason plow can not come out first; the horses do not, therefore, assist in raising the plow, while on complainant's the point does come first and the horses do assist.

Second. The Worrell & Rynerson patents of March '71 (there being two of them, Nos. 113,234, 113,235) were not nor was either of them mentioned in the pleadings in either case, nor was either of them referred to in the evidence in either case above.

Complainant can prove and if a re-hearing is granted will prove that neither of these plows has any device for locking the plow either in or out of the ground. The bar F in No. 113,234 and the bar C in No. 113,235 hold the front end of the beam, but not the plow. This is totally unlike the lever of the crank-bar of the Starling combination. Neither of these plows can for the reason stated use a rolling cutter; in neither of them is the furrow regulated or changed at will by the driver, as in the Starling, by means of a lever.

Both plows when raised from the ground come heel first; both plows have bottom friction; they drag along; the weight of the plow and the weight of the furrow are carried on the plow bottom.

The Owen patents of February, '72, and November '72, are in some respects, though not in detail, like the Worrell-Rynerson, though with different claims. Neither can be locked in the ground; the bar D holds the front end of the beam in the first patent and the bar M in the second patent; these are unlike the crank-bar lever and axle of the Starling first claim which locks the plow at any given level. Neither of the two plows referred to will permit the use of a rolling cutter. In case of weeds or rubbish they will be thrown out of the ground. The first of the Owen patents above has

bottom friction, in the second the inventor probably saw the error he had committed and supplied a *weighted tripping locking lever* e^2 pivoted to a pawl e^1 by which this plow can be prevented from sinking too deep into the ground. This device is entirely unlike the Starling lever and axle; it is only locked when the driver calls it into action; it is only used as the specifications say, in ground having a very smooth surface: complainant's plow is locked at any given depth of furrow all the time. Except the bar D of the first and the bar M of the second patent, neither of these plows have any device for regulating the depth of the furrow. The bars are rigid; they are different from and less effective than the Starling device; they do not control the plow. In both of these plows the heel comes out of the ground first.

Complainant respectfully shows that these two patents were both of them adjudicated by Judge Nelson in *Starling* v. *The St. Paul Plow Works* not to anticipate the Starling patents. Therefore complainant's attorney relying somewhat upon the comity existing between courts, did not elaborate the evidence respecting these plows as he might have done had it not been for the decision referred to.

With respect to the two Owen patents the court holds that they show a yoke or crank-bar to which the plow beam is hung, which yoke when tilted or rocked by means of a lever extending in the hand of the driver raises the plow beam. Petitioner says that while this is so the actual operation of the two plows referred to is vastly different from the complainant's plow in all essential particulars as hereinbefore stated; and he prays leave to point out said differences and to introduce evidence thereon if the court will hear.

Petitioner further shows concerning the Baker patent December, 1860, No. 30,863, the Frazer patent of April, 1861, No. 32,129, the Sattley patent February, 1864, No. 41,449, and the Davenport patent of February, 1866, No.

58,612, that both himself and attorney were taken by surprise at the trial of this case, as follows:

That his attorney was proceeding to argue upon the Baker patent when the court stated to him substantially that as he now understood the case it would be unnecessary to discuss patent; which did not show a crank-bar; thereupon complainant's attorney did not refer to any of the before mentioned patents. That the court in opinion holds that the before mentioned patents, the plows come out of the ground point first instead of heel first, and that that was well known as a device in plows long before complainant's patent. Petitioner shows that his plow has vastly different and greater capabilities than raising the plow point first. He says and shows that except the raising of the plow point first the before mentioned patents do not possess any of the capabilities which his plow possesses, they have none of the devices covered in his first claim; they have none of them a crank-bar, lever and axle, as shown and described in his patent; none of them have means of locking the plow in the ground, but one can lock the plow out of the ground; none of them can use the rolling cutter; none of them have devices, nor do they nearly approach the devices claimed by the complainant in the first claim of his patent.

The Sattley patent before referred to was not evidence in the Weir case; it was evidence in the Peoria plow case; it is in this case cited as a plow raising out of the ground point first. Complainant says that the Sattley patent does not raise point first; that the Sattley specifications distinctly describe the plow as maintaining a horizontal position.

Complainant respectfully shows that the before mentioned Mason patent of January, 1869, and the before mentioned Worrell & Rynerson patents are the principal patents cited against him in this case; that upon none of these patents has he ever had an opportunity to give in any testimony;

the last two were never pleaded in the case: that the first was not offered in the Peoria case until the last thing, and then a simple copy of the patent was rushed in; the defendants' attorney had no notion there was anything in it as defense to complainant's patent, and the leading attorney in the case probably never heard it. The attorney in the Peoria case was probably surprised at its appearance as anticipating complainant's patent in any way.

Complainant shows that it would be a great hardship, that it would work great injustice thus to have his case decided against him upon patents which were never in evidence in the case, directly or indirectly, and upon another patent upon which the court never heard any evidence and upon which complainant has had no opportunity to offer any evidence.

For the reasons before stated complainant respectfully asks the court to grant a rehearing.

WILLIAM STARLING.

UNITED STATES OF AMERICA.

CIRCUIT COURT OF THE UNITED STATES, SOUTHERN DIVISION, NORTHERN DISTRICT, OF ILLINOIS.

Personally appeared before the undersigned deputy clerk of said court, William Starling, being duly sworn, on oath, says he is complainant in the above entitled cause and that the matters and things stated in the foregoing petition are all of them true in substance and in fact, as he verily believes.

Subscribed and sworn to before me, this 28th day of August, A. D., 1891.

E. P. SLOAN,
Chief Deputy Clerk.

[Endorsed]: Filed August 28, 1891.

W. H. BRADLEY, *Clerk.*
By E. P. SLOAN, *Chf. Dpy. Clerk.*

UNITED STATES OF AMERICA

CIRCUIT COURT OF THE UNITED STATES, SOUTHERN DIVISION

NORTHERN DISTRICT, OF ILLINOIS.

William Starling, Complainant, *Appellant*,
v.
The Weir Plow Company and William Weir, Defendants, *Appellees*.

In Equity for Infringement.

Petition for Appeal, filed Dec. 3, 1891.

Now comes the complainant, William Starling, by H. W. Wells, his attorney, and shows that in the said record and proceeding in said cause manifest error hath intervened to his prejudice and injury. He therefore presents to the Court this his petition for leave to appeal said cause to the United States Circuit Court of Appeals in and for the Seventh Circuit at Chicago, for correction of said errors.

He files herewith an assignment of the several errors on which he relies, setting up separately and particularly each error asserted and intended to be urged, he prays that leave to appeal may be given.

H. W. WELLS,

Solicitor for Complainant.

UNITED STATES OF AMERICA.

CIRCUIT COURT OF THE UNITED STATES, SOUTHERN DIVISION,
NORTHERN DISTRICT OF ILLINOIS.

William Starling, Complainant, *Appellant*, *v.* The Weir Plow Company and William Weir, Defendants, *Appellees*.	*In Equity for Infringement.*

And for special causes of errors assigned upon said record and proceedings complainant shows the following, to-wit: Assignment of Errors, filed Dec. 3, 1890.

1. That a judgment and decree was entered by the Court below, that the said complainant's patent, to-wit, patent to William Starling, August 18, 1874, No. 154,293, was void for want of novelty, and the complainant's bill was dismissed at the complainant's cost, whereas the Court should have decreed that said patent was a good and valid patent, and should have decreed an injunction and an accounting by the defendant.

2. The Court ordered and decreed that the patent to William Mason, January 12, 1869, No. 85,838, had and showed a combination similar to that in the complainant's above mentioned patent, and anticipated the complainant's patent, and the Court so held, and dismissed complainant's

bill and (at) complainant's cost, whereas the Court should have held that the patent to Mason aforesaid did not have or contain the combination mentioned in complainant's patent, and did not anticipate the same, and should have held the complainant's patent was a good and valid patent and should have so decreed.

3. The Court held that the Worrell & Rynerson patent March 28, 1871, No. 113,235, had and showed a combination similar to that in complainant's patent and decided that said patent anticipated the complainant's patent and that complainant's patent was void, and dismissed complainant's bill, whereas the Court should have held that complainant's patent was a good and valid patent and that the patent to Worrell & Rynerson above did not have or contain any elements described in complainant's patent, and should have decreed an injunction and an accounting by the defendants for their infringement.

4. The Court held that the Baker patent, December 11, 1860, No. 30,863; the Frazier patent, April 23, 1861, No. 32,129; the Sattley patent, February 2, 1864, No. 41,449; the Davenport, February 9, 1866, No. 58,612; the Owen patent, February 6, 1872, No. 123,505; the Owen patent, November 5, 1872, No. 132,772, each severally had and showed a combination similar to that in the complainant's patent, and anticipated the complainant's patent, and decided to dismiss complainant's bill at his cost, whereas the Court should have held that the foregoing patents did not have, nor did any of them have or show the combination in complainant's patent, and did not anticipate it, and should have so decreed, and that the defendants account for their infringement.

5. The evidence showed that a plow organized as de-

scribed in complainant's said patent would draw much lighter than a walking plow cutting the same furrow; that the weight of the plow, the weight of the furrow, the weight of the driver riding on the plow, was by devices therein mentioned, transferred from the plow to the wheels, and that the complainant's plow would carry a rolling cutter so as to cut stalks and rubbish and not be thrown out of the ground; that complainant's plow is solidly locked in the ground when at work, by the lever L, that by the same lever it is locked out of the ground when going from field to field; that by the same lever the depth of furrow can be regulated at the driver's will without stopping the team, and that the driver can ride. The evidence also showed that no other plow shown or referred to in the evidence could accomplish the same results, neither did the evidence show that at the date of complainant's patent any plow was in existence which could accomplish the above results. But the court held and decreed that the complainant's patent was void and was anticipated by the patents referred to, and dismissed the complainant's bill at his cost. Whereas the court should have held that the complainant's patent was valid, and was not anticipated and should have decreed an injunction and an accounting by the defendant.

6. The Court erroneously held and decided that several of the other patents in evidence offered by the defendants in the case had and showed similar combinations to that described in complainant's patent, and held and decided that complainant's patent was anticipated and void, and dismissed complainant's bill at his costs. But the Court should have held that not one of the patents offered in evidence by the defendant had any combination similar to that shown and stated in complainant's patent. And the Court should have held complainant's patent good and valid and should have made a decree to that effect and that the de-

fendants should account for their said infringements.

6. The evidence in this case showed that the defendants herein manufactured a specimen of a plow which infringed the complainant's patent and was in all respects similar to the combination and devices in complainant's patent, but the Court erroneously dismissed complainant's bill at complainant's cost. Whereas the Court should have decided complainant's patent good and valid and should have decided complainant's patent was infringed by defendants, and should have decreed against the defendants for an injunction and accounting.

8. Thereupon afterwards the complainant moved the Court for a re-hearing of the said cause, which motion was in the words and figures following:

(Here read and insert complainant's motion for a re-hearing).

But the Court erroneously denied said motion when the Court should have allowed and granted the same.

Wherefore and because of the errors before assigned complainant hath prayed an appeal to the United States Circuit Court of Appeals for the Seventh Circuit, for the amendment and correction thereof.

(Upon which appears the following endorsement):

Endorsement upon Petition for Appeal

Appeal allowed upon the complainant's giving bond in three hundred and fifty dollars, bond to be approved by the judge of this Court.

H. W. BLODGETT,
Judge.

[redacted]20

[Endorsed]: Filed December 3, 1891.

W. H. BRADLEY, *Clerk.*

E. P. SLOAN, *Deputy.*

Appeal Bond.

Appeal bond filed Dec. 3, 1891.

Know all men by these presents, that we, William Starling, principal, and Norris Pitt, as surety, are held and firmly bound unto The Weir Plow Company, a corporation, and William Weir, in the full and just sum of three hundred and fifty dollars ($350.00) to be paid to the said Weir Plow Company and William Weir their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 30th day of December in the year of our Lord one thousand, eight hundred and ninety-one.

Whereas, lately in the Circuit court of the United States for the Southern Division, Northern district of Illinois, on the 20th day of August, 1891, in the suit depending in said court, between William Starling, complainant, and the Weir Plow Company and William Weir, defendants, a decree was rendered against the said William Starling for costs, and that his bill be dismissed, and the said William Starling having obtained an order for an appeal and filed a copy thereof in the clerk's office of the said Court to reverse the said decree in the aforesaid suit, and a citation directed to the said Weir Plow Company and William Weir citing and admonishing them to be and appear at the United States Circuit Court of Appeals, for the Seventh Circuit, to be holden at Chicago, on the day of 1890.

Now, the condition of the above obligation is such, that if the said William Starling shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligations to be void: else to remain in full force and virtue.

Sealed and delivered in the presence of

[SEAL] WILLIAM STARLING.
[SEAL] NORRIS PITT.

Approved by H. W. BLODGETT, *Judge*.

[Endorsed]: Filed Dec. 3, 1891.

W. H. BRADLEY, *Clerk*.
By E. P. SLOAN, *Chf. Deputy*.

On this fifth day of January, in the year of our Lord one thousand eight hundred and ninety-two, personally appeared before me, the subscriber, T. G. Peacock, and makes oath that he delivered a true copy of the within citation to William Hanna, the President of The Weir Plow Company, and to Jessie Weir, an adult member of the family of William Weir, explaining the contents of said copy to the said Jessie Weir.

T. G. PEACOCK.

Sworn to and subscribed the fifth day of January, A. D. 1892.

W. H. SEXTON,
[SEAL] *Clk. Co. Court*.

UNITED STATES OF AMERICA, *ss.*.

The President of the United States to The Weir Plow Company, a corporation, and William Weir, Greeting:

Citation, signed Dec. 23, 1891.

You are hereby cited and admonished to be and appear at a United States Circuit court of Appeals, for the Seventh Circuit, to be holden at Chicago within thirty days from the date hereof, pursuant to a certain order for an appeal allowed by the court, and filed in the clerk's office of the United States Circuit court for the Southern Division of the Northern district of Illinois, wherein William Starling is complainant, and you are defendants, to show cause, if any there be, why the decree rendered against the said complainant as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Henry W. Blodgett, Judge of the said Circuit court of the United States, this 23d day of December, in the year of our Lord one thousand, eight hundred and ninety-one.

H. W. BLODGETT,
Judge.

163-705

Office Supreme Court, U. S.
FILED
MAY 4 1895
JAMES H. MCKINNEY,
CLERK.

163-705

Supreme Court of the United States.

OCTOBER TERM, 1895.

No. 604.

PETITION FOR WRIT OF CERTIORARI.

WILLIAM STARLING, PETITIONER,

vs.

WEIR PLOW COMPANY, ET. AL.

PETITION OF WILLIAM STARLING FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

WM. STARLING, Petitioner.

Bulletin Show Print, Chillicothe, Ill.

UNITED STATES OF AMERICA, ss.,

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1895.

No. 604.

EX-PARTE. WILLIAM STARLING, PETITIONER.

Petition for Writ of Certiorari, requiring the Circuit Court of Appeals for the Seventh Circuit to certify to the Supreme Court for its review and determination the case of William Starling, Complainant, vs. Weir Plow Company and William Weir, Respondents.

To the Honorable, the Supreme Court of the United States:

The petition of William Starling respectfully shows to this Honorable Court as follows:

First. Your petitioner is a Citizen of the United States and by occupation a farmer, now residing in the Town of Hallock, County of Peoria, State of Illinois. Under date of August 18, 1874, there was granted to your petitioner for the full term of seventeen years then next ensuing, Letters Patent of the United States, (No. 154,293), for certain Improvements in Sulky Plows theretofore devised by your petitioner, and of which he believed and still believes him-

self to be the first, original and sole inventor. Your petitioner was the only grantee in said Letters Patent named, and during such term of seventeen years and ever since continued to be and now is sole owner of the exclusive rights secured by virtue of the Letters Patent aforesaid.

Second. Your petitioner, as Complainant, on or about October 10, 1889, (being then a resident of Belvidere, in the State of Nebraska), brought Chancery suit in the Circuit Court of the United States for the Northern District of Illinois against the Weir Plow Company, (a corporation), and William Weir, both of whom then were and now are Citizens of the State of Illinois and residents at Monmouth in said State. By his Bill of Complaint in such suit, your petitioner charged the Respondents named with unlawful infringement upon his exclusive rights under said patent No. 154,293, because of the manufacture and sale by said Respondents, without authority, of certain sulky plow machines which, as your petitioner alleged and now believes, embody the subject matter covered by such patent.

Third. Respondents duly appeared, and on November 27, 1889, filed joint and several Answer in said suit and by Apt averments, in denial of your petitioner's claim as first and original inventor of the subject matter covered by said patent No. 154,293, pleaded that substantially the same thing had, prior to his supposed invention thereof, been patented by or shown and described in certain United States Letters Patent fully set out and specified, as required by statute. Amongst the twelve patents thus enumerated in defense were:

	No.	*Name.*	*Date.*
A.	120,560	Worrell & Ryerson	October 31, 1871
B.	123,505	Owen	February 6, 1872
C.	132,772	Owen	November 5, 1872

Fourth. Your petitioner entered his replication in said suit January 23, 1890, and the cause being at issue he proceeded with the taking of his *Prima Facie* testimony, which was closed during May, 1890. Shortly thereafter, to-wit, June 12, 1890, said Respondents, by leave of Court, filed an amendment to their Answer in the cause, setting up in further support of the defense that your petitioner was not the first and original inventor of the subject matter defined by his said patent No. 154,293, some twelve additional Letters Patent of the United States. In the latter part of June, 1890, Respondents began and completed their defense testimony and in course thereof entered in evidence and took the deposition of expert witness concerning eighteen out of the total array of twenty-two patents pleaded by their said Answer and its Amendment, amongst which patents, so entered and exploited in evidence, being the patents (A), (B) and (C), designated above. No other patents except the eighteen (18), respecting which notice had been given by Answer and its Amendment, as aforesaid, were offered or entered by Respondents, for any purpose.

Fifth. Your petitioner took his testimony in rebuttal in August, 1890, and as witness in his own behalf then gave testimony in detail tending to show the impertinence and insufficiency of each and every of the eighteen patents aforesaid relied upon by Respondents in defeat of your petitioner's claim as first and original inventor of the subject matter at issue.

Sixth. Your petitioner further shows that said cause came on for hearing in the United States Circuit Court for the Northern District of Illinois, at the October Term, A. D., 1890, at which time there was then depending and at issue on the law side of said Court, with depositions duly taken for both parties, (jury being waived) a certain other

suit brought by your petitioner as Plaintiff against The Peoria Plow Co., (a corporation) of Peoria, Illinois, Defendant, wherein said Defendant was charged with infringement of your petitioner's exclusive rights under his same Letters Patent, viz: No. 154,293. Certain of the depositions in such suit at law, to-wit, of William Starling, Calvin Stowell and Marshall Sattley, (Transcript of Record pp. 128-131), were admitted by consent as a part of the Record in said Chancery cause against Weir Plow Company, and in conjunction with these it appears (Record p. 131) that, "The Defendant offered the following patents," viz.:

No.	*Name.*	*Date.*
D. 31,702	Cox & Throp	March 19, 1861
E. 88,280	Davison	March 30, 1869
F. 85,838	Mason	January 12, 1869
G. 41,449	Sattley	February 2, 1864

Seventh. Hearing in said Chancery cause brought by your petitioner against Weir Plow Company et al was had late in the year 1890, but no opinion was published by the Court (Blodgett J.) until August 1891, at which time, in conjunction with the filing of the opinion (49 Fed. 637), the Court entered its order dismissing your petitioner's said Bill of Complaint for want of equity. (Rec. p. 16.)

Eighth. In said Opinion, (Rec. p. 17-22), the Court sustains the issue of lack of novelty of your petitioner's said invention, finding the same was anticipated by Letters Patent, viz.:

No.	*Name.*	*Date.*
B. 123,505	Owen	February 6, 1872
C. 132,772	Owen	November 5, 1872
G. 85,338	Mason	January 12, 1869

heretofore enumerated by same marginal letter of designa-

tion, and by still another patent, viz.:

No.	*Name.*	*Date.*	
H.	..... Worrell & Ryerson	March,	1871

which nowhere appears as entered in the record of said cause, in any way or for any purpose.

Ninth. During the period that such Chancery cause was held under advisement by said Court, viz.: November, 1890, till August, 1891, before publication of its Opinion therein, your petitioner shows that there was sometimes pending before this Honorable, The Supreme Court of the United States, a certain other cause, (No. 329, October Term 1890), in which your petitioner was Defendant in error, the same being entitled *St. Paul Plow Works* vs. *Starling*, and brought by writ of error directed to the Circuit Court of the United States for the District of Minnesota to reverse a judgment there obtained on an action begun below in the year 1885 by your petitioner as Plaintiff against said St. Paul Plow Works, Defendant, for the recovery of license fees due to your petitioner under contract with said St. Paul Plow Works. By such contract certain rights of manufacture were granted to said Company in respect to the invention in sulky plows covered by said patent of your petitioner, viz.: No. 154,293.

Tenth. Your petitioner shows that in said action had by him in the Minnesota Circuit against the St. Paul Plow Works, Defendants, amongst other matters, set up the plea of lack of novelty in your petitioner's said patent No. 154,-293, and gave notice of various prior Letters Patent of the United States relied upon to sustain such plea. Issue being joined and Jury waived, the trial of said cause proceeded in open Court about January, 1888, and continued through some five or six days. Against your petitioner's

objection there was offered and admitted some six or seven prior patents alleged to anticipate said patent of your petitioner, together with a large amount of testimony of expert witnesses directed to the explication of said patents.

Amongst other of the Letters Patent then and there offered in defense and fully explained to the Court (Nelson J.) were the patents of Owen, viz.: (B) and (C), which, as appears were amongst the four patents relied upon by Blodgett J., in dismissal of your petitioner's said Chancery suit against Weir Plow Company, et al. The Circuit Court for District of Minnesota, (February, 1887) sustained your petitioner's patent as against the defenses of lack of novelty and other defenses urged in defeat of your petitioner's claim. (Consult 29 Fed. Reps., p. 790). Thereafter said Court, in October, 1887, denied a motion for re-hearing in respect to further Letters Patent alleged to be newly discovered, and which were directed to the same defense of lack of novelty. (Consult 32 Fed. Reps., p. 290).

Eleventh. The St. Paul Plow Works in due course sued out a writ of error from the judgment obtained against it by your petitioner, and in its Transcript of the Record docketed in said cause in this Honorable Court, (No. 1367, October Term 1887) brought up various of the defense patents relied upon, and testimony relating thereto, including, *inter alia*, the Owens patents (B) and (C) above mentioned and assigned error as to the rulings of the Circuit Court respecting all of said patents.

Twelfth. Your petitioner had mortgaged his farm to procure the necessary money to institute and carry on the suit against the St Paul Plow Works. The mortgage becoming due, your petitioner, for the purpose of getting the amount of the judgment against said St. Paul Works, to

liquidate the mortgage moved this Honorable Court to dismiss the writ of error aforesaid, on the ground that the action was brought for breach of contract and that the judgment being for less than Five Thousand Dollars, this Honorable Court had no jurisdiction to review the case.

Thirteenth. This Honorable Court denied your petitioner's motion to dismiss, and in its Opinion, (127 U. S., p. 376) says:

"The present case was an action upon a contract by which the plaintiff licensed the defendant to make and sell a patented article, and not a suit for infringing the plaintiff's patent. But the questions whether that patent was valid, and whether it had been infringed, were put in issue by the pleadings and decided by the Circuit Court. . . . . It is sufficient for the decision of this motion, that we have no doubt that a case in which the validity and the infringement of a patent are controverted is a 'case touching patent rights,' and therefore within the appellate jurisdiction of this Court under Sec. 699 of the Revised Statutes, without regard to the sum or value in dispute."

Fourteenth. Thereafter, in April 1891, said cause was argued by both parties thereto before this Honorable Court on final hearing. The learned Counsel for Plaintiff in error devoted pp. 35-49 of his printed brief to the discussion of the prior patents, including Owens (B) and (C), offered in defense at the trial below. By leave of this Honorable Court, L. L. Bond Esq., of Chicago, Illinois, Attorney at that time on behalf of Respondents in the Chancery cause already referred to, (Sections 1-8) and brought by your petitioner against the Weir Plow Company and William Weir, (then being held under advisement by Blodgett J.), filed an additional brief for Plaintiff in error, viz.: St. Paul Plow Works, and discussed the alleged anticipating patents in thirty-nine pages of printed brief of forty-nine pages.

Fifteenth. This Honorable Court handed down its Opinion in the St. Paul case May 11, 1891, (140 U. S., p. 184), affirming the judgment awarded to your petitioner by the lower Court. In the course of such Opinion, the Court says, (pp. 196, 197):

"We cannot review the finding of the Circuit Court that none of the earlier patents put in evidence by the defendant anticipated the plaintiff's invention. Although the defendant excepted to this finding as a conclusion of law, yet it was really a conclusion of fact on the evidence which the Circuit Court had before it. Witnesses were summoned on both sides as to what the earlier patents showed; and we cannot consider the evidence as if this were a suit in equity."

Sixteenth. In view of the full discussion upon the several defense patents had before this Honorable Court in the St. Paul case by oral argument and brief of Counsel and by additional brief of L. L. Bond Esq., *amicus curiae*, especially addressed thereto, and because of the earlier ruling in denial of your petitioner's motion to dismiss said cause, wherein this Court held (127 U. S., 378) that "the questions whether that patent was valid and whether it had been infringed were put in issue by the pleadings and decided by the Circuit Court," your petitioner respectfully submits that the subject matter of the defense patent, being thus fully before this Honorable Court it would have refused to declare "We find no error in the record" if the fact were that any one of such patents was deemed to anticipate your petitioner's invention. The trial below being by the Honorable Circuit Judge, without a jury, the construction placed by the lower Court, as matter of law, upon the several defense patents and the sufficiency of invention as matter of law disclosed by your petitioner's patent in view thereof, were questions necessarily brought to the notice of this Court, according to the rulings (Market Street Co. vs.

Rowley, decided January 7, 1895, and cases there cited; May vs. Juneau County, 137 U. S., 408; French vs. Carter, 137 U. S., 239). Your petitioner's patent having been maintained by this Honorable Court as against *inter alia*, Owens patents (B) and (C), the insufficiency of such patents as a defense in anticipation of the invention of your petitioner became *res adjudicata*, and should have been so treated at Circuit.

Seventeenth. To avoid the rule of *res adjudicata* Blodgett J. in his Opinion in the Weir Plow Company Chancery suit, (Transcript of Record pp. 17-22; 53 Fed. Rep., 119) contended that inasmuch as your petitioner's patent had three claims, all of which were necessarily at issue in the license suit against the St. Paul Works, whereas in the Weir Plow Company before Blodgett J., the infringement was laid as to claim 1 of your petitioner's patent that therefore it was impossible to enforce the doctrine of *res adjudicata*, since there was a lack of certainty in the St. Paul suit as to which claim or claims had been there held to be invaded on judgment of "guilty" rendered therein.

Your petitioner's patent has three claims. These are severally addressed to distinct features of the entire invention. In their order the claims concern (1) the lock and shift lever combination; (2) the toggle stop combination, and (3) the adjustable rolling coulter combination. A general license to use the invention would authorize the use of any one or more of these three features. A licensee who employed only one of such features must pay, ordinarily, the royalty rate exactly the same as if he had taken all of them. And a suit to compel payment must result in verdict of "guilty" were it shown that either of the three several claims had been used by the licensee. All of the claims are at large in the suit, and were the trial before a

jury and no special findings had, it would be impossible to say from the record, after judgment, upon which claim the verdict was based. Nor could the plaintiff thereafter elect or allot the claim upon which he chose to think the recovery rested? (*Russell* v. *Place*, 94 U. S., 606; *Packet Co.* v. *Sickles*, 24 How., 333; *Ibid*, 5 Wall., 580).

But when the trial is before the Court, (jury being waived), the findings of the Court on the facts in evidence may easily aid in determining which of the claims was contested.

On reading the opinion of the Circuit Court (*Starling* v. *St. Paul Plow Works*, 29 Fed. Rep., 790), it becomes at once manifest that the controversy raged about Starling claim 1 and none other. The context shows that the defense of non-patentability was directed to that claim alone and infringement centered upon such claim, else there had been no object in assailing it. In disposing of the motion for new trial the same thing appears. (*Starling* v. *St. Paul Plow Works*, 32 Fed. Rep., 290). The Court quotes claim 1 only, and examines the newly discovered evidence (Haslup patent No. 127,878, Rec., p. 222) in its relation to such claim; and remarks in passing that "the triai was before the Court without a jury and was very thorough." The same thing abundantly appears again from the following excerpts taken from the Opinion of the Supreme Court when the case went there on writ of error:

(1) "The fact that the defendant continued after the alleged renunciation to make and sell the plow with features embodying the *first* claim of the patent and that the plow so made was successful and saleable, indicates that the notice was a mere pretense."

St. Paul Plow Works v. *Starling*, 140 U. S., 184, 196.

(2) "Notwithstanding the defendant gave notice that it renounced the license, yet it did not in fact renounce it, for it continued to make plows embodying *one* of the claims of the patent."

Ibid, p. 196.

(3) "The Circuit Court found that the *first* claim of the plaintiff's patent was infringed in the 1,310 plows."

Ibid, p. 196.

(4) "The defendant . . . offered to show . . . that the lever device shown in the plaintiff's patent . . . was used on two sulky plows prior to 1872. . . . We think the evidence was immaterial. There was no offer to prove that the lever device was so combined that the combination operated in the same way, for the same purposes, as in the *first* claim of the plaintiff's patent."

Ibid, p. 198.

(5) "Defendant could not recover upon . . . plows made thereafter which were not Starling plows, but were so different that they contained at most but *one* of the three elemeuts or *claims* that distinguished the Starling plow."

Ibid, p. 192, brief plaintiff in error.

Your petitioner submits that in view of the situation detailed, Blodgett J. committed a grevious error, to your petitioner's injury, by not excluding from his consideration under principle of *res adjudicata*, the Owens patents (B) and (C), which were before this Honorable Court as defenses against the very claim 1 that was the sole claim involved in the Chancery suit against the Weir Company.

Eighteenth. Of the two remaining patents relied upon by Blodgett J., in defeat of your petitioner's patent, viz.:

No.	*Name.*	*Date.*
(H.)	..... Worrell & Ryerson.....	March, 1871
(G.) 85,838	..... Mason.....	January 12, 1869

your petitioner shows that said Worrell & Ryerson patent (H), was not pleaded nor offered in evidence, nor was any testimony taken respecting it by either side. The only patent to Worrell & Ryerson regularly noticed in Respondent's Answer and concerning which testimony was adduced, is (A) No. 120,560, Worrell and Ryerson, October 31, 1871, (Transcript p. 9, p. 215). The specification of said patent refers to earlier patents of the same parties, one of which is said to bear date March 28, 1871. But there were two patents of such date, viz.: March 28, 1871 (Transcript pp. 235, 239) neither of which was ever pleaded nor offered in evidence, nor was any testimony taken concerning the same.

The Mason patent (G) was not pleaded in Respondent's Answer, nor was any evidence offered touching it. Said patent had been entered by Defendant in the suit of your petitioner against the Peoria Plow Company, and came into the Record in the Chancery cause against the Weir Plow Works, only after such cause was decided by Blodgett J., and as appears (Transcript of Record p. 131, foot) was but barely offered in evidence, without a word of testimony concerning it. Your petitioner believed that under Section 4920, Revised Statutes, such Mason patent (G) must have been noticed by answer, or if entered without statutory notice that the Court would be justified in wholly ignoring it, or at most would give effect thereto only so far as it might aid in construing your petitioner's patent. (*Seymour* vs. *Osborne*, 11 Wall., 516, 549; *Mills Co.* vs. *Whitehurst*, 56 Fed. Rep., 589, 595; *Waterman* vs. *Shipman*, 55 Fed. Rep., 982, 987). It was an utter surprise, in view of lack of all testimony by Respondents touching said Mason patent (G)

to find by his opinion that Blodgett J. had selected such patent as an anticipation of your petitioner's invention.

Nineteenth. Your petitioner promptly filed petition for rehearing in said Chancery cause against Weir Plow Company, (August 28, 1891) setting out the various errors herein detailed (Transcript of Record p. 133) which motion for rehearing was promptly over-ruled, and thereupon your petitioner took appeal to the United States Circuit Court of Appeals for the Seventh Circuit, and amongst other matters assigned the several errors (Transcript p. 138) set out by his petition for re-hearing in the Court below. Said cause was argued on appeal at the October Term of said Court, A. D. 1892, and decision thereupon rendered by said Court of Appeals, October 27, 1892, in these words (53 Fed. Rep., 119) "*Per Curiam.* The decree appealed from is affirmed, upon the grounds stated in the opinion of the Court below, reported in 49 Fed. Rep., 637." Your petitioner thereafter, at the same Term of said Court of Appeals, filed his petition for rehearing, which was held under advisement until May 4, 1893, at which date said Court denied such petition.

Twentieth. Your petitioner has still another Chancery suit now depending in the United States Circuit Court for Northern District of Illinois against the Deere Plow Company, charging said Respondent with infringement of his same patent, viz.: No. 154,293, but on final hearing the Honorable District Judge Grosscup declined to pass upon the matters at issue because of the ruling adverse to your petitioner's said patent made by said Circuit Court of Appeals in the cause against the Weir Plow Company, as by copy of such opinion annexed hereto, more fully appears.

Twenty-first. Your petitioner shows that by reason of

the several protracted litigations detailed herein, he has become seriously impoverished, and is without means to pay the charges of competent Counsel, and is obliged to make petition to this Honorable Court for leave to appear in his own behalf, and to have such other relief touching the costs of the Court, for printing of the Record in said Weir Plow Company suit and for other requirements under the rules of Court, as may seem meet and proper within the limits adequate for a clear understanding and just decision of the matters set out herein. Your petitioner verily believes, if opportunity be allowed, that he can show to this Honorable Court the insufficiency of the various patents relied upon by Blodgett J., and the Circuit Court of Appeals for the Seventh Circuit in defeat of your petitioner's said patent.

YOUR PETITIONER thus respectfully submits that the question upon the legal and just construction and effect of his said patent, No. 154,293, involved in and presented by the said case of your petitioner against the Weir Plow Company and William Weir, Respondents, should be authoritatively and finally adjudged by this Honorable Court upon and after a full presentation to the Court of the merits of the said question on the part of the petitioner and of the said respondent.

WHEREFORE, your petitioner respectfully prays that a writ of *certiorari* may be issued out of and under the seal of this Court, directed to the United States Court of Appeals for the Seventh Circuit, commanding the said Court to certify and send to this Court, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of the said Circuit Court of Appeals in the said case therein entitled William Starling, Appellant, vs. Weir Plow Company and William Weir, Appellees, to the end that the said case may be reviewed and determined by

this Court as provided in Section 6 of the Act of Congress entitled "An Act to establish Circuit Courts of Appeals and to define and to regulate, in certain cases, the jurisdiction of the Courts of the United States, and for other purposes" approved March 3, 1891, or that your petitioner may have such other or further relief or remedy in the premises as to this Court may seem appropriate and in conformity with the said act, and that the said decree of the said Circuit Court of Appeals in the said case, and every part thereof, may be reversed by this Honorable Court.

And your petitioner will ever pray, etc.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

WILLIAM STARLING, being duly sworn, says: That he is the party named in the foregoing Petition; that he has read said Petition by him subscribed and that the facts therein stated are true to the best of his information and belief.

SWORN to and subscribed before me this 2nd day of May, A. D. 1895.

Notary Public, Cook Co., Illinois.

OPINION BY GROSSCUP J., NOVEMBER 26, 1894.

United States Circuit Court.

NORTHERN DISTRICT OF ILLINOIS—SOUTHERN DIVISION.

WILLIAM STARLING,

vs.

DEERE & CO., ET AL.

This is a suit charging the defendant with the infringement of patent No. 154,293, granted August 18, 1874, to Complainant for an "Improvement in Sulky Plows" and praying an injunction and accounting.

The record shows that a similar bill upon the same petition against the Weir Plow Company and William Weir came to a final hearing upon the law and the facts before Judge Blodgett some years since; that the Defendants in that suit tested the validity of the Complainant's patent specially insisting that it was anticipated by prior patents to William Mason of January, 1869, and to Worrell & Ryerson of March, 1871, and to Owen February, 1872; that the Court upon further consideration found such patents to be anticipations of the complainant's patent, and accordingly judged complainant's patent invalid and dismissed the bill; that an appeal was prosecuted from this decree to the Circuit Court of Appeals for the Seventh Circuit, upon consideration whereof, upon the law and the facts, the finding

163 U.S. 705

Supreme Court of the United States.

163-705

JOSÉ BREGARO,
Libellant and Appellee,
vs.

THE STEAMSHIP "CENTURION," HER ENGINES, &C.,
JOHN BLUMER & COMPANY,
Claimants and Appellants,
and

THE NEW YORK AND PORTO RICO STEAMSHIP COMPANY,
Respondent and Appellant.

THE AMERICAN SUGAR REFINING COMPANY,
Libellant and Appellee,
vs.

SAME.

TRANSCRIPT OF RECORD ON APPLICATION FOR WRIT OF CERTIORARI.

NEW YORK:
THE EVENING POST JOB PRINTING HOUSE, 156 FULTON STREET.
(EVENING POST BUILDING.)

1895.

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United States Circuit Court of Appeals 1

FOR THE SECOND CIRCUIT.

JOSÉ BREGARO,
Libellant and Appellee,

AGAINST

The Steamship "CENTURION," her Engines, &c., John Blumer & Co.,
Claimants and Appellants. 2

In the Matter of the Petition of JOHN BLUMER & CO.

AGAINST

THE NEW YORK AND PORTO RICO STEAMSHIP COMPANY,
Respondent and Appellant.

STATEMENT. 3

The above suit was commenced by the libellant filing his libel in the District Court of the United States for the Southern District of New York on March 9, 1893, against the steamship *Centurion*. The claimants, John Blumer & Co., filed their claim to said steamship and filed a stipulation for value without issue of process. On April 12, 1893, claimants filed their petition for process against the New York and Porto Rico Steamship Company, which

process was issued the same day and served on the said company, which appeared on April 18, 1893, and on April 25, 1893, filed its answer to said petition.

Claimants filed their answer to the libel on May 2, 1893, and on May 25, 1893, filed an amended answer thereto.

The cause was tried on June 5, 1893, before Hon. Addison Brown, District Judge, who rendered his decision on June 27, 1893. The interlocutory decree was entered on July 3, 1893, with an order of reference to Edward L. Owen, Esq., Commissioner, to compute the amount of libellant's damages. Thereafter the respondent moved to strike the petition of the claimants from the files for want of jurisdiction in the District Court to entertain it, to set aside the process issued against respondent for want of jurisdiction in the Court to issue it and to amend the respondent's answer so as to allege such want of jurisdiction. On the 22nd day of May, 1894, an order was duly made and entered denying such motions.

The final decree herein was entered on the 11th day of June, 1894.

Notices of appeal were filed by both the claimants and the respondent on the 23d day of June, 1894.

To the Honorable ADDISON BROWN, Judge of the District Court of the United States for the Southern District of New York:

The libel of José Bregaro, doing business under the name of Bregaro & Co., against the British steamer *Centurion*, her tackle, apparel and furniture, and all persons intervening for their interest therein, in a cause of contract civil and maritime, alleges as follows, on information and belief:

FIRST.—At some time in the month of February, 1893, the libellant shipped on board the steamer *Centurion*, then lying in the port of Ponce, in Porto Rico,

and bound to the port of New York, 250 hogsheads of 7
molasses in good order and well conditioned, to be carried and transported to New York and delivered to order or assigns in like good order, for the freight agreed upon, the said libellant receiving therefor from the master or agents of said steamer a bill of lading wherein and whereby the said master or agents agreed to carry and transport the said molasses and deliver the same to the libellant or his order upon the payment of the freight agreed upon.

SECOND.—Thereafter, the said steamer sailed from the Port of Ponce, Porto Rico, with said molasses on board, for New York, where she arrived on or about February 26, 1893, and now is. Notwithstanding the libellant has been at all times, and now is, 8
ready and willing to receive the said merchandise in good order, and on so receiving the said merchandise to pay the freight thereon, yet the said master has not delivered said merchandise to libellant in good order and well conditioned; but owing to the careless, negligent and improper manner in which the said merchandise was stowed, and the want of proper care on the part of said agent or said master, his officers and crew and persons employed by him or them; and by reason of the fact that the said hogsheads of molasses were loosely and improperly stowed, without encountering any unusual or extraordinary weather, they were thrown about and became broken, and a large part 9
of the molasses lost, whereby the libellant has sustained damages in the sum of three thousand dollars.

THIRD.—That the said steamer is now within the Southern District of New York and within the jurisdiction of this court, as the libellants are informed and believe.

FOURTH.—That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

10 Wherefore, the libellant prays that process in due form of law, according to the course of this Court in cases of admiralty and maritime jurisdiction, may issue against the said steamer, her tackle, apparel and furniture, and that all persons claiming any interest therein may be cited to appear and answer all and singular the matters aforesaid, and that this Honorable Court would be pleased to decree the payment of the damages aforesaid, with costs, and that the said boat may be condemned and sold to pay the same, and that the libellant may have such other and further relief in the premises as in law and justice he may be entitled to receive.

11 JOSÉ BREGARO,
By William Parkin,
one of his Proctors.

McFARLAND & PARKIN,
Libellant's Proctors.

Southern District of New York, ss.:

WILLIAM PARKIN, being duly sworn, says: That he is one of the proctors for the libellant herein. That the libellant, as deponent is informed and believes, resides at Porto Rico, and is now absent from the State of New York. That the matters set forth in the foregoing libel are derived principally from original documents and the agents or representa-
12 tives of libellant in this city. That deponent has read the said libel and knows the contents thereof, and that the matters therein stated are true to the best of the knowledge, information and belief of this deponent.

WILLIAM PARKIN.

Sworn to before me this 8th day of March, 1893.

JOHN McCLURE,
Notary Public,
N. Y. Co.

(Endorsed)—Libel.—Filed March 9, 1893.

To the Honorable ADDISON BROWN, United States District Judge for the Southern District of New York: 13

The petition of John Blumer & Co., owners of the steamship *Centurion*, respectfully shows unto the Court as follows:

FIRST.—That on March 8, 1893, a libel was filed against the steamship *Centurion* by Jose Bregaro to recover the sum of $3,000 as damages claimed to have been caused to a consignment consisting of 250 hogsheads of molasses, owing to the careless, negligent and improper manner in which said cargo was stowed, and the want of proper care on the part of 14 the master, his officers and crew or of the agent of said vessel and the persons employed by him, and by reason of the fact that the molasses was placed between decks, and was not properly stowed, and by reason of the further fact that the hatches covering the sugar were not properly closed, in consequence of which the said hogsheads of molasses were broken and the molassas ran through the hatches into the lower hold and washed a large part of the sugar out of the hogsheads and damaged the sugar greatly, whereby the libellant has sustained damage to the amount of $3,000.

SECOND.—Process was issued pursuant to the 15 prayer of the said libel, and a claim was duly filed by John Blumer & Co., owners of the said steamship, and a stipulation for value was furnished in the sum of $3,000.

THIRD.—The *Centurion* at all the times mentioned in the said libel of Jose Bregaro, was under a time charter to the New York and Porto Rico Steamship Company, a domestic corporation, by a charter of demise, which provided, amongst other things, that all cargoes should be loaded and stowed by the said charterers, and all work and labor in and about the

16 loading, stowage and discharging thereof was performed and paid for by the charterers, and their servants, the master and officers of said steamship under the charter-party having no duties to perform in connection with the loading, stowage or discharge of the cargo, their functions being limited exclusively to the navigation of the vessel. The cargo in question was loaded by the agents and servants of the said charterer, the New York and Porto Rico Steamship Company in Porto Rico, under the supervision of their purser and supercargo, who accompanied the vessel, and if there was any negligence in and about the loading, stowage or care of the said cargo, as alleged in the said libel (which is
17 expressly denied) such improper stowage, negligence and want of care was on the part of the said servants of the time charterer, and not on the part of the master, officers and crew of said steamship. A copy of said charter is annexed.

(See page 319.)

FOURTH.—All and singular the premises are true, and within the admiralty and maritime jurisdiction of this honorable Court.

Wherefore, your petitioners pray that process in due form of law, according to the course of this Honorable Court, in cases of admiralty and maritime jurisdiction may issue against the New
18 York and Porto Rico Steamship Company, citing it to appear and answer this petition, and that this Honorable Court will be pleased to pronounce against the said New York and Porto Rico Steamship Company, instead of against the petitioners, in case the allegations of the said libel be proved and sustained; and the petitioners pray for such other and further relief as they may be entitled to receive, with costs.

CONVERS & KIRLIN,
Proctors for Petitioners.

Southern District of New York, ss.: 19

ROBERT WATSON, being duly sworn, says: That he is master of the steamship *Centurion*, and agent for the petitioners. That the foregoing petition is true according to his information and belief. He further says that the reason why this petition is not verified by the petitioners is that they are absent from the United States.

ROBERT WATSON.

Sworn to before me this 11th day of April, 1893.

GEORGE A. BAKER,
Notary Public,
New York County.

20

(Endorsed)—Petition.—Filed April 12, 1893.

To the Honorable ADDISON BROWN, Judge of the District Court of the United States for the Southern District of New York:

The answer of the New York and Porto Rico Steamship Company to the petition filed by John Blumer & Company, owners of the steamship *Centurion*, in a suit brought by Jose Bregaro against said steamship *Centurion*, alleges as follows:

21

I.—It admits that on March 8, 1893, a libel was filed in this Court by Jose Bregaro against the steamship *Centurion* to recover the sum of $3,000, as damages claimed to have been caused to a consignment of 250 hogsheads of molasses, but denies that the causes of said damage alleged in said libel are correctly set forth in the first article of the petition, and prays leave to refer to said libel for a true statement of such alleged causes of damage.

II.—It admits the allegations of the second article of the petition.

22 III.—It admits that the steamship *Centurion* at the times mentioned in the libel of Jose Bregaro was under a time charter to the respondent, which is a domestic corporation, but it denies that the terms of the said charter are correctly set forth in the third article of the petition, and prays that the original of said charter may be produced at the trial, that the true intent and meaning thereof may appear.

And respondent alleges that the cargo of the said steamship *Centurion* was loaded and stowed under the supervision of the master and officers of said steamship; that said stowage was assented to and approved by them, and the cargo and said molasses
23 were in all respects properly and sufficiently stowed, and that by the provisions of the bills of lading given for said molasses there was no responsibility for leakage or breakage or damages to packages.

And respondent further alleges that during the voyage in question said steamship encountered unusual and heavy weather whereby certain of said hogsheads were broken and damaged and the contents lost, and that all the damage to said 250 hogsheads of molasses was caused by perils of the sea, and not by any fault or want of care in the stowage thereof.

IV.—Respondent admits the jurisdiction of this
24 Court, but denies all the other allegations of the fourth article of the petition.

Wherefore, respondent prays that the petition of the owners of the said steamship *Centurion* may be dismissed, with costs.

STEARNS & CURTIS,
Proctors for Respondents.

Southern District of New York, ss.:

HENRY T. KNOWLTON, being duly sworn, says: That he is the treasurer of the New York and Porto Rico Steamship Company, and that the foregoing

answer is true of his own knowledge except as to the matters therein stated upon information and belief, and that as to those he believes it to be true. 25

(Sg.) HENRY T. KNOWLTON.

Sworn to before me this
25th day of April, 1893.

[SEAL] LAWRENCE KNEELAND,
Notary Public,
Kings Co.,
Cert. filed in N. Y. Co.

(Endorsed)—Answer of N. Y. & Porto Rico S. S. Co.—Filed April 25, 1893.

26

To the Honorable ADDISON BROWN, United States District Judge for the Southern District of New York:

The answer of John Blumer & Co., claimants of the steamship *Centurion*, to the libel of Jose Bregaro against said steamship, her tackle, apparel and furniture, and all persons intervening for their interest therein, in a cause of contract civil and maritime, alleges as follows:

FIRST.—They admit at some time in the month of February, 1893, Bregaro & Co. shipped on board the *Centurion*, then lying in the port of Ponce, Porto Rico, and bound for New York, 250 hogsheads of 27
molasses, in apparent good order and well conditioned, to be carried and transported to New York, and delivered to order or assignees in like good order, for the freight agreed upon, and that said Bregaro & Co. received from the agents of the New York and Porto Rico Steamship Company, time charterers of the vessel, a bill of lading wherein and whereby the said New York and Porto Rico Steamship Company agreed to carry and transport the said molasses and deliver the same unto order at New York, upon the terms and conditions in said bill of lading expressed;

28 and except as hereinbefore admitted, they deny the allegations contained in the first article of the libel.

SECOND.—They admit that thereafter the steamship sailed from the port of Ponce, Porto Rico, with the said molasses on board, bound for New York, where she arrived in the latter part of February, 1893, and that owing to perils encountered on the voyage certain cases of molasses became broken, and owing to the inherent vice of the molasses certain quantities of it leaked out during the passage; but the deny each and every other allegation in the second article of the libel contained.

29 THIRD.—They admit the matters contained in the third article of the libel.

FOURTH.—They admit the matters contained in the fourth article of the libel, except that all and singular the premises in the said libel are true, which they deny.

FIFTH.—For a separate defense the claimants allege that at all the times mentioned the *Centurion* was chartered unto the New York and Porto Rico Steamship Company, a domestic corporation, under a charter of demise, a copy of which is annexed to the petition herein marked "A," and made a part of
30 this answer.

SIXTH.—According to the said charter-party the said charterers were to and did stow the said cargo on the voyage in question by its own servants, and discharged it at the port of destination by its own servants in such manner as was by it deemed advisable. A supercargo accompanied the vessel on the voyage, who overlooked and superintended the stowage at the various ports of loading. The officers of the steamer had no interest in or responsibility for the stowage of said cargo, as agents for the owners of the steamer *Centurion;* and the char-

ter party expressly provided by clause 21, that no 31
claim was to be made against the owners for loss of cargo. Claimants, therefore, deny that the loss in question is ascribable to any act or omission for which the vessel or her owners are to be liable under the circumstances above set forth, and say that if there was any neglect or default on the part of those engaged in and about the stowage, care or delivery of the cargo (which they deny), that such neglect or default, was the neglect or default of the agents or servants of the said time charterers, for which the claimants and the steamship were not to be responsible.

SEVENTH.—Claimants further say that the bill of 32
lading issued for the said cargo was, upon a printed form, entitled New York and Porto Rico Steamship Company, and was signed by the agents of the said company at Ponce without the authority or knowledge of the master of said steamship. They further say that the said contract was a contract between the New York and Porto Rico Steamship Company and the libellants, and that no lien against the said steamship arises under the circumstances set forth on account of a breach of the said contract.

EIGHTH.—By the terms of the said bill of lading, the act of God and all accidents, loss and damage whatsoever from machinery, boilers and steam navi- 33
gation, or from perils of the seas or rivers, or from any act, neglect or default whatsoever of the pilot, master or mariners were excepted and neither the ship nor the owners were to be liable for damages arising from any of the said causes. It was further provided in said bill of lading that the shipowner was not to be liable for any damage to goods capable of being covered by insurance; that in case any claim should arise against the steamship or any owners thereof for loss or damage accruing on the voyage, such claim was to be limited in amount to the value of the articles at

34 the port of shipment, upon the date of shipment, and was to be preferred at the office of the agent of the steamship, at the port of destination within three days after delivery of the merchandise, in default whereof it was agreed between the parties to the said bill of lading that claims for loss or damage should be deemed waived and the steamship and her owners discharged therefrom.

It was also therein provided that the steamship and her owners were not to be liable for leakage, breakage or any decay of goods or damage to packages from the said causes.

Wherefore, they pray that the libel may be dismissed as to the steamship *Centurion*, her tackle,
35 apparel and furniture, with costs, or that this Honorable Court will make such other and further decree in the premises as justice may require.

CONVERS & KIRLIN,
Proctors for Claimants.

SOUTHERN DISTRICT OF NEW YORK, } ss.:
City and County of New York, }

J. P. KIRLIN, being duly sworn, says: That he is one of the proctors for the claimants herein, and that the foregoing answer is true according to his information and belief derived from statements made to him by the master, officers and agents of said steamship.

36 J. P. KIRLIN.

Sworn to before me this 25th }
day of April, 1893. }

GEO. A. BAKER,
Notary Public,
New York County.

(Endorsed)—Answer.—Filed May 2, 1893.

UNITED STATES CIRCUIT COURT OF APPEALS 37

FOR THE SECOND CIRCUIT.

AMERICAN SUGAR REFINING COMPANY,
Libellant and Appellee,

vs.

The Steamship "CENTURION," her engines, &c., JOHN BLUMER & Co.,
Claimants and Appellants. 38

In the Matter of the Petition of JOHN BLUMER & Co.

AGAINST

THE NEW YORK AND PORTO RICO STEAMSHIP COMPANY,
Respondent and Appellant.

39

STATEMENT.

The above suit was commenced by the libellant filing its libel in the District Court of the United States for the Southern District of New York on March 9, 1893, against the steamship *Centurion*.

The claimants, John Blumer & Co., filed their claim to said steamship and filed a stipulation for same without issue of process. On April 12, 1893, claimants filed their petition for process against the New York and Porto Rico Steamship Company, which process was issued the same day and served on the

said company, which appeared on April 18, 1893, and on April 25, 1893, filed its answer to said petition. Claimants filed their answer to the libel on May 2, 1893. On May 12, 1893, libellant filed an amended libel and on May 25, 1893, claimants filed their answer thereto.

On June 5, 1893, on libellant's motion, an order was made amending the pleadings and proceedings herein by joining Jose Bregaro as co-libellant without prejudice to any proceedings already taken, and on June 8, 1893, libellant filed an amended libel, making Jose Bregarro co-libellant.

The cause was tried on June 5, 1893, before Hon. Addison Brown, District Judge, who rendered his decision on June 27, 1893, and on July 14, 1893, rendered his decision, overruling an application by the respondent for a reargument.

The interlocutory decree was entered on July 3, 1893, with an order of reference to Edward L. Owen, Esq., Commissioner, to compute the amount of libellant's damages without prejudice to further hearing, as between ship and charterers. On April 16, 1894, an order was made upon the application of the libellant, striking out Jose Bregaro as co-libellant. A motion having been made by the respondent to strike the claimant's petition from the files for want of jurisdiction in the District Court to entertain it, to set aside the process issued against the respondent for want of jurisdiction in said Court to issue it, and to amend respondent's answer so as to allege said want of jurisdiction, an order was made and entered on the 4th day of May, 1894, denying said motion. The respondent having moved upon the testimony taken before the commissioner upon the reference to ascertain libellant's damages for a reargument of the cause or for an order directing that such testimony might be considered a part of the evidence upon the trial of the question of the liability of the claimants and respondent, an order was made and entered on the 4th day of May, 1894, denying said motion. There-

after the respondent moved that the libel be dismissed on the ground that the libellant had not shown title to or right of action therein, and that by striking out Jose Bregaro as a party libellant, there was left no party having a right of action, and claimants filed an exception to the Commissioners' report on same grounds. On May 27, 1894, an order was made denying said motion, and overruling claimant's exception. 43

The final decree was entered on the 11th day of June, 1894.

Notices of appeal were filed by both the claimants and respondent on June 23, 1894.

44

To the Honorable ADDISON BROWN, Judge of the District Court of the United States for the Southern District of New York:

The amended libel of the American Sugar Refining Company, a corporation organized under the laws of the State of New Jersey, and Jose Bregaro, doing business under the name of Bregaro & Company, against the British steamer *Centurion*," her tackle, apparel and furniture, and all persons intervening for their interest therein, in a cause of contract, civil and maritime, alleges as follows:

45

FIRST.—At some time in the month of February, 1893, the firm of Bregaro & Company, shipped on board the steamer *Centurion*, then lying in the port of Arroyo in Porto Rico, and bound to the port of New York, 465 hogsheads of sugar in good order and well conditioned, to be carried and transported to New York and delivered to order or assigns in like good order, for the freight agreed upon, the said Bregaro & Company receiving therefor from the master or agent of said steamer, a bill of lading, wherein and whereby it was agreed that the said steamer should carry and transport the said sugar and deliver the

46 same to the consignees or their order, on payment of the freight agreed.

SECOND.—Thereafter the said firm of Bregaro & Company endorsed and delivered said bills of lading to the American Sugar Refining Company, who thereupon became entitled to the delivery of said sugar under the said terms of bills of lading.

THIRD.—The libellants allege on information and belief that the said sugar was placed on board said steamer in the lower hold, and above said sugar between decks was stowed a number of hogsheads of molasses, and with said cargo on board said steamer
47 sailed from Arroyo, Porto Rico, for the port of New York, where she arrived on or about the 26th day of February, 1893, and where she now is; but notwithstanding the libellants have been at all times and now are ready to receive said sugar in good order, and on so receiving the same to pay the freight thereon, yet the said master has not yet delivered the whole thereof to the libellants in good order, but owing to the careless, negligent and improper manner in which said cargo was stowed, and the want of proper care on the part of the master, his officers and crew, or of the agent of said vessel and the persons employed by him, a large part of said cargo was lost or damaged.

48 The libellants allege upon information and belief that before the cargo was put on board the steamer her hold and bilges were not properly cleaned and prepared for the carriage of said cargo, and that her hatches between the molasses and sugar were not properly closed. During the voyage the officers and crew neglected to properly operate the pumps, and a number of hogsheads of molasses having been broken and others having been shifted either through stress of weather or improper stowage, their contents ran down into the lower hold upon the sugar, partly through the hatches and partly through the scuppers. That by reason of

such defective condition of the hatches, pumps, 49
bilges, sluiceways, decks, scuppers and other equipment and appurtenances, and the failure and neglect of the officers and crew or those in charge of her, to properly pump the vessel, the molasses and the drainage from the sugar collected in the lower hold, washing out part of the sugar from the hogsheads and damaging the remainder, to the libellants damage twenty five hundred dollars.

FOURTH.—That the said steamer is now within the southern district of New York, and within the jurisdiction of this Court, as the libellants are informed and believe.

FIFTH.—That all and singular the premises are 50
true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, the libellants pray that process in due form of law, according to the course of this Court in cases of admiralty and maritime jurisdiction, may issue against the said steamer, her tackle, apparel and furniture, and that all persons claiming any interest therein may be cited to appear and answer, all and singular the matters aforesaid, and that this Honorable Court would be pleased to decree the payment of the damages aforesaid, with costs, and that the said steamer may be condemned and sold to pay the 51
same, and that the libellants may have such other and further relief in the premises as in law and justice they may be entitled to receive.

MACFARLAND & PARKIN,
Proctors for Libellants.

Southern District of New York:

WILLIAM PARKIN, being duly sworn, says: That he is one of the proctors for the libellants herein; that the libellant the American Sugar Refining Company is a foreign corporation organized under

52 the laws of the State of New Jersey; that the libellant Jose Bregaro is a non-resident of the State of New York, residing at Porto Rico; that the matters set forth in the foregoing libel are derived from documents and papers in deponent's possession, and from information furnished deponent by the libellants; that he has read the foregoing libel and the matters therein stated are true to the best of the knowledge, information and belief of this deponent.

WM. PARKIN.

Sworn to before me this
7th day of June, 1893.

J. B. WALLACE,
Notary Public,
53 N. Y. Co.

(Endorsed)—Amended Libel.—Filed June 8, 1893.

To the Honorable ADDISON BROWN, United States District Judge for the Southern District of New York:

The petition of John Blumer & Co., owners of the steamship *Centurion*, respectfully shows unto the Court as follows:

FIRST.—That on March 8, 1893, a libel was filed
54 against the steamship *Centurion*, by the American Sugar Refining Company, to recover the sum of $2,500 as damages claimed to have been caused to a consignment consisting of 465 hogsheads of sugar, "owing to the careless, negligent and improper manner in which said cargo was stowed, and the want of proper care on the part of the master, his officers and crew or of the agent of said vessel and the persons employed by him, and by reason of the fact that the molasses was placed between decks, and was not properly stowed, and by reason of the further fact that the hatches covering

the sugar were not properly closed, in consequence 55
of which the said hogsheads of molasses were broken and the molasses ran through the hatches into the lower hold, and washed a large part of the sugar out of the hogsheads, and damaged the sugar greatly, whereby the libellant has sustained damage to the amount of $2,500."

SECOND.—Process was issued, pursuant to the prayer of the said libel, and a claim was duly filed by John Blumer & Co., owners of the said steamship, and a stipulation for value was furnished in the sum of $2,500.

THIRD.—The *Centurion* at all the times mentioned 56
in the said libel of the American Sugar Refining Company was under a time charter to the New York and Porto Rico Steamship Company, a domestic corporation, by a charter of demise, which provided, amongst other things, that all cargoes should be loaded and stowed by the said charterers, and all work and labor in and about the loading, stowage and discharging thereof was performed and paid for by the charterers, and their servants, the master and officers of said steamship under the charter party, having no duties to perform in connection with the loading, stowage or discharge of the cargo, their functions being limited exclusively to the navigation of the vessel. The cargo in question was loaded by 57
the agents and servants of the said charterer, the New York and Porto Rico Steamship Company, in Porto Rico, under the supervision of their purser and supercargo, who accompanied the vessel, and if there was any negligence in and about the loading, stowage or care of the said cargo, as alleged in the said libel (which is expressly denied), such improper stowage, negligence and want of care was on the part of the said servants of the time charterer, and not on the part of the master, officers and crew of said steamship. A copy of said charter is annexed (see p. 319).

58 FOURTH.—All and singular the premises are true, and within the admiralty and maritime jurisdiction of this Honorable Court.

Wherefore, your petitioners pray that process in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the New York and Porto Rico Steamship Company, citing it to appear and answer this petition, and that this Honorable Court will be pleased to pronounce against the said New York and Porto Rico Steamship Company, instead of against the petitioners, in case the allegations of the said libel be proved and sustained, and the petitioners pray for such other and further relief
59 as they may be entitled to receive, with costs.

CONVERS & KIRLIN,
Proctors for Petitioners.

Southern District of New York, ss.:

ROBERT WATSON, being duly sworn, says: That he is master of the steamship *Centurion*, and agent for the petitioners. That the foregoing petition is true according to his information and belief. He further says that the reason why this petition is not verified by the petitioners is that they are absent from the United States.

ROBERT WATSON.

60 Sworn to before me this 11th day of April, 1893.

GEO. A. BAKER,
Notary Public,
N. Y. Co.

(Endorsed)—Petition.—Filed April 12, 1893.

To the Honorable ADDISON BROWN, Judge of the District Court of the United States for the Southern District of New York: 61

The answer of the New York and Porto Rico Steamship Company to the petition filed by John Blumer & Company, owers of the steamship *Centurion*, in the suit brought by the American Sugar Refining Company against said steamship *Centurion*, alleges as follows:

I.—It admits that a libel was filed by the American Sugar Refining Company against the steamship *Centurion*, alleging substantially as is alleged in the first article of the said petition.

62

II.—It admits the allegation of the second article of the petition.

III.—It admits that the steamship *Centurion* at the time mentioned in the libel of the American Sugar Refining Company was under a time charter to the respondent, which is a domestic corporation, but it denies that the terms of said charter are correctly set forth in the third article of the petition, and prays that the original of said charter may be produced at the trial, that the true intent and meaning thereof may appear.

And respondent alleges that the cargo of said steamship *Centurion* was loaded and stowed under the supervision of the master and officers of the said 63 steamship, and that such stowage was assented to and approved by them, and that said cargo was in all respects properly and sufficiently stowed.

And respondent further alleges that in and by said charter it was stipulated and agreed that said steamship was tight, staunch, strong and in every way fitted for the carriage of all kinds of lawful merchandise, and that the owner should maintain her in a thoroughly efficient state in hull and machinery for and during the said service. That the cargo loaded on said steamship was lawful merchandise.

64 And respondent alleges that all damage to the cargo of sugar belonging to the libellant was caused by the defective condition of her hatches, decks, scuppers, bilges or other equipments and appurtenances, and the defective condition or failure to open the sluiceways, and the failure to pump the said vessel, thereby allowing the drainage and molasses to accumulate and damage the sugar stowed in her between decks and lower holds, and also to the defective condition of the bulkheads in the lower hold, or to the improper opening of the sluiceways in the bulkheads, allowing the accumulated drainage and molasses to pass into her holds, instead of going to her pumps, for all of which said steamship is re-
65 sponsible.

IV.—Respondent admits the jurisdiction of this Court, but denies the other allegations of the fourth article of the petition.

Wherefore, respondent prays that the petition of the owners of the steamship *Centurion* may be dismissed, with costs.

STEARNS & CURTIS,
Proctors for Respondents.

Southern District of New York, ss.:

HENRY T. KNOWLTON, being duly sworn, says: That he is the treasurer of the New York and Porto Rico Steamship Company, and that the foregoing
66 answer is true of his own knowledge, except as to the matter therein stated upon information and belief, and that as to those he believes it to be true.

(Sg.) HENRY T. KNOWLTON.

Sworn to before me this
25th day of April, 1893.

LAWRENCE KNEELAND,
[SEAL.] Notary Public,
Kings Co.
Cert. filed in N. Y. Co.

(Endorsed)—Answer of N. Y. & Porto Rico S. S. Co.—Filed April 25, 1893.

To the Honorable ADDISON BROWN, United States District Judge for the Southern District of New York: 67

The answer of John Blumer & Co., claimants of the steamship *Centurion*, to the libel of The American Sugar Refining Company against said steamship, her tackle, apparel and furniture, and all persons intervening for their interest therein, in a cause of contract, civil and maritime, alleges as follows:

FIRST.—They admit at some time in the month of February, 1893, Bregaro & Co. shipped on board the *Centurion*, then lying in the port of Ponce, Porto Rico, and bound for New York, 465 hogsheads of 68
sugar, in apparent good order and well conditioned, to be carried and transported to New York, and delivered to order or assignees in like good order, for the freight agreed upon, and that said Bregaro & Co. received from the agents of the New York and Porto Rico Steamship Company, time charterers of the vessel, a bill of lading wherein and whereby the said New York and Porto Rico Steamship Company agreed to carry and transport the said sugar and deliver the same unto order at New York, upon the terms and conditions in said bill of lading expressed; and except as hereinbefore admitted, they deny the allegations contained in the first article of the libel.

69

SECOND.—They deny any knowledge or information sufficient to form a belief relative to the matters contained in the second paragraph of the libel.

THIRD.—They deny any knowledge or information sufficient to form a belief where the said cargo was stowed on board the said steamer, but admit that the vessel duly sailed from Ponce with the said cargo on board and arrived at the port of New York near the end of February, 1893, and that owing to perils of the sea, encountered on the voyage, a certain part of the sugar was in contact with molasses, and

70 that owing to the action of the molasses on the sugar, or from inherent vice of the sugar part of the contents of some of the hogsheads was out; but they deny each and every other allegation in the third article of the libel contained.

FOURTH.—They admit the matters contained in the fourth article of the libel.

FIFTH.—They admit the matters contained in the fifth article of the libel, except the allegation that all and singular the premises in said libel are true, which they deny.

71 SIXTH.—For a separate defense, the claimants allege that at all the times mentioned the *Centurion* was chartered unto the New York and Porto Rico Steamship Company, a domestic corporation, under a charter of demise, a copy of which is annexed to the petition herein, marked "A," and made a part of this answer.

According to the said charter party, the said charterers were to and did stow the said cargo on the voyage by its own servants, and discharged it at the port of destination by its own servants in such manner as was by it deemed advisable. A supercargo accompanied the vessel on the voyage, who
72 overlooked and superintended the stowage at the various ports of loading. The officers of the steamer had no interest in or responsibility for the stowage of said cargo as agents for the owners of the steamer *Centurion*, and the charter party expressly provided, by clause 21, that no claim was to be made against the owners for loss of cargo. Claimants therefore deny that the loss in question is ascribable to any act or omission for which the vessel or her owners are to be liable under the circumstances above set forth, and say that if there was any neglect or default on the part of those engaged in and about the stowage, care or delivery of the cargo (which they

deny), that such neglect or default was the neglect 73
or default of the agents or servants of the said time charterers, for which the claimants and the steam ship are not to be held responsible.

SEVENTH.—Claimants further say that the bill of lading issued for the said cargo was upon a printed form entitled New York & Porto Rico Steamship Company, and was signed by the agents of the said company at Ponce, without the authority or knowledge of the master of said steamship. They further say that the said contract was a contract between the New York and Porto Rico Steamship Company and the libellants, and that no lien against the said steamship arises under the circumstances set forth 74
on account of a breach of the said contract.

EIGHTH.—By the terms of the said bill of lading "the Act of God and all accidents, loss and damage whatsoever from machinery, boilers and steam navigation, or from perils of the seas and rivers, or from any act, neglect or default whatsoever of the pilot, master or mariners were excepted, and neither the ship nor the owners were to be liable for damages arising from any of the said causes. It was further provided in said bill of lading that the shipowner was not to be liable for any damage to goods capable of being covered by insurance; that in case any claim should arise against the steamship or any 75
owners thereof for loss or damage accruing on the voyage, such claim was to be limited in amount to the value of the articles at the port of shipment, upon the date of shipment, and was to be preferred at the office of the agent of the steamship, at the port of destination within three days after delivery of the merchandise, in default whereof it was agreed between the parties to the said bill of lading that claims for loss or damage should be deemed waived, and the steamship and her owners discharged therefrom."

76 It was also therein provided that the steamship and her owners were not to be liable for leakage, breakage or any decay of goods, or damage to packages, from the said causes.

Wherefore they pray that the libel may be dismissed as to the steamship *Centurion*, her tackle, apparel and furniture, with costs, or that this Honorable Court will make such other and further decree in the premises as justice may require.

CONVERS & KIRLIN,
Proctors for Claimants.

SOUTHERN DISTRICT OF NEW YORK, }
City and County of New York, } ss.:

77 J. P. KIRLIN, being duly sworn, says: That he is one of the proctors for the claimants herein, and that the foregoing answer is true according to his information and belief derived from statements made to him by the master, officers and agents of said steamship.

J. P. KIRLIN.

Sworn to before me this 25th }
day of May, 1893. }

GEO. A. BAKER,
[L. S.] Notary Public,
New York County.

78 (Endorsed)—Amended Answer.—Filed May 25, 1893.

UNITED STATES DISTRICT COURT, 79

SOUTHERN DISTRICT OF NEW YORK.

JOSÉ BREGARO,
Libellant,
AGAINST
The Steamship "CENTURION," &c.; John Blumer & Co.,
Claimants.

THE AMERICAN SUGAR REFINING COMPANY,
Libellant,
AGAINST 80
The Steamship "CENTURION," &c.; John Blumer & Co.,
Claimants.

DEPOSITIONS of witnesses, called on behalf of claimants, taken at New York, pursuant to notice, and by consent, before George A. Baker, Notary Public.

NEW YORK, April 12, 1893.

APPEARANCES:

Messrs. CONVERS & KIRLIN (by Mr. KIRLIN), for Claimants.

Messrs. MACFARLAND & PARKIN (by Mr. PARKIN), for Libellants. 81

Messrs. STEARNS & CURTIS for the Respondents, The New York Porto Rico Steamship Company, impleaded.

GEORGE A. BLACK, Esq., of Counsel.

ROBERT WATSON, a witness called on behalf of claimants, being duly sworn, testifies as follows:

DIRECT-EXAMINATION by Mr. Kirlin:

Q. What is your full name, captain? A. Robert Watson.

82 Q. Where do you reside? A. I reside in a town they call Blythe.

Q. What is your occupation? A. Master mariner.

Q. What ship do you command? A. The *Centurion*.

Q. How long have you commanded her? A. Seven months.

Q. How long have you been a steamship master? A. Twenty-five years.

Q. Were you master of the *Centurion* on the voyage from Porto Rico ports to New York? A. Yes.

Q. In February of this year? A. Yes.

Q. Was your steamer under charter, or being run
83 by the owners? A. She was under charter.

Q. (Paper shown witness.) Is that a copy of the charter-party? A. Yes, this is a copy.

Said paper is offered in evidence.

Mr. Parkin: Objected to as irrelevant and immaterial.

Mr. Black: All I object to is that it should be subject to correction by the original if necessary.

Said paper is offered subject to correction, and is marked Claimants' Exhibit 1, April 12, 1893.

Q. What cargo did you bring on the voyage from
84 Porto Rico to New York, beginning in February, about the 10th? A. Coffee, bags of sugar, molasses.

Q. Hogsheads of molasses? A. Hogsheads of molasses, hogsheads of sugar, bagged sugar and coffee.

Q. What ports did you load at? A. Ponce. The first port, we took in coffee at Aguadilla, and the next port, I think, was at Ponce—molasses.

Q. What was the next port, and what did you take in? A. Humacao. I took about sixty hogsheads of sugar.

Q. What was the next port? A. I could hardly tell you the next port.

Q. You have the log there; look at it. (Witness looks at log.) A. Yubacao. We took in sugar. 85

Q. Hogsheads or bags, or both? A. One hundred and eight bags of sugar, and I think we took about forty hogsheads there. The weather came on bad, and we left there.

By Mr. Black:

Q. Forty hogsheads besides the sugar? A. I think so.

Q. Hogsheads of what? A. Sugar.

By Mr. Kirlin:

Q. What was the next port, and what did you load? A. We took all sugar, the next port. 86

Q. What was it? A. Arroyo.

Q. What did you take there? A. Sugar.

Q. In hogsheads or bags? A. In hogsheads.

Q. What was your next port? A. Guayanilla.

Q. What did you load there? A. Sugar. It does not say whether it was bags or casks here.

Q. Did you take both casks and hogsheads at that other port? A. I don't think we took any bags of sugar.

Q. You think it was all hogsheads? A. All hogsheads.

Q. What was the next port? A. Mayaguez.

Q. And what did you load there? A. Sugar in hogsheads and bags. 87

Q. And what was your next port, and what did you ship there? A. Arecibo. We took bag sugar in there.

Q. What was the next port? A. San Juan.

Q. At San Juan what did you take? A. I think we took all sorts in there—sugar and molasses in bags.

Q. Who loaded and stowed the cargo at the various ports? A. Stevedores.

Q. By whom were they employed? A. Employed by the charterers of the ship.

88 Q. The New York and Porto Rico Steamship Company? A. Yes, by their agents.

Q. Paid by them? A. Yes.

Q. Had you or your officers anything whatever to do in connection with the stowage? A. Only tallying the cargo.

Q. Were you consulted at all about the stowage?

Mr. Parkin: I object to this as immaterial.

A. No.

Q. Were you consulted as to where it should be stowed—in what part of the ship the various consignments should be placed? A. No, he didn't ask me any questions about the stowage. Of course, this is his trade; he ought to know where to stow.

89 Q. You are now referring to the supercargo? A. Yes.

Q. What was his name? A. Maloney, I think they call him; I don't know whether they call him William or John.

Q. Is his name J. W. Maloney? A. That is the man.

Q. Did he go out with you as supercargo? A. Yes; and came home with me.

Q. He is the man who had charge of the stowage of the cargo? A. Yes.

Q. Were you aware of the provisions of the charter party at the time this cargo was taken in? A. Yes.

90

Mr. Parkin: All this testimony is taken subject to my objection as immaterial.

Mr. Kirlin: Yes.

Q. Who signed the bills of lading for the cargo? A. The purser generally signs them, or the agents on the island.

Q. Agents of whom? A. Of the Porto Rico Company.

Q. (Papers shown witness.) Look at these papers, purporting to be copies of the bills of lading of the cargo mentioned in the two libels, and say whether

you received that cargo at the ports mentioned in 91
those bills of lading at the foot? A. Yes. These are the same bills of lading.

Q. Those are the bills of lading that were issued for this cargo, copies of them? A. Yes.

Said papers are offered in evidence, and are marked Claimants' Exhibits 2 and 3, April 12, 1893.

They are subject to correction.

Q. Had you anything to do with the loading or stowage of those particular lots of cargo? A. Nothing.

Q. Or were you in any way consulted about them? A. No; nothing. 92

Q. How long have you been trading with Porto Rico? A. Since January.

Q. Did you load at these same ports on a previous voyage? A. Since I have loaded. That was the first voyage.

Q. That was the first voyage? A. Yes.

Q. On the subsequent voyage had your cargo been stowed by the same stevedores?

Mr. Black: Objected to.

A. The same.

Q. Were they stevedores of standing in those various communities? A. Oh, yes.

Q. Experienced men? A. Yes, experienced men. 93

Q. Did your cargoes, including the one in question, appear to have been well stowed, as far as you observed it?

Mr. Parkin: Objected to.

A. Yes.

Q. Were you below during the stowage of the cargo, so as to be able to speak particularly in reference to stowage? A. I never was below in the hold looking at the cargo.

Q. The charge in the libel is that the hogsheads

94 of molasses were loosely and improperly stowed. Was that so, as far as you saw?

Mr. Black: He could not see. Objected to.

Q. You could see from the deck? A. I could see from the deck.

Q. As far as you saw? A. As far as I saw, I thought they were pretty well stowed.

Q. After completing your loading in San Juan, were your hatches all ——. A. Properly secured.

Q. Properly secured? A. Overlooked by me and the superintendent. I looked at them myself.

Q. Have you a plan of the ship here? A. Yes.

Q. (Chart shown witness.) Is this it? A. That is
95 it.

Said chart is marked Claimant's Exhibit 4 for identification, April 12, 1893.

Q. How many top hatches have you? A. Four; and one small bunker hatch.

Q. How are those secured? A. By hatches and tarpaulins.

Q. Are they caulked and battened? A. Caulked and battened.

Q. You overlooked these personally? A. Yes.

Q. You are able to state that they were properly secured? A. Yes.

Q. What day did you sail on the voyage from San
96 Juan to New York? A. I think it was on the 19th, Sunday, the 19th of February, 1893. (Witness looks at log.) The 19th.

Q. Was Mr. Maloney on board? A. Yes.

Q. What kind of weather did you experience generally on the voyage, without going into particulars? A. Very bad weather.

Q. Have you the log with you? A. Yes.

Q. Will you please refer to the log, and tell us what the weather was, from day to day, from the time you left San Juan until you arrived at New York? A. The first two days it was pretty moderate—without looking at the log.

Q. The 19th and 20th? A. Yes. 97

Mr. Parkin: He had better be accurate.

Witness: On the 19th and 20th it was pretty reasonable weather. (Witness looks at log.)

Q. How was the weather on the 21st? A. Well, it was strong—breezes—fresh breezes—and a strong head sea; shipping much water on deck.

Q. What was your course? A. North three-quarters west.

Q. How was the wind on that day. In which direction? A. Northeast; from northeast to east, on the 21st. In the fore part it was northeast; and the second part of the 21st, east.

Q. How was it on the 22d? A. Veering to southeast; steering now to northwest. At noon, increased 98
breeze, and strong cross sea; ship rolling heavy; the wind in the southeast at the fore part, and at noon flies into southwest; strong breeze; and at midnight it is northwest—a gale.

Q. What took place in the afternoon? A. The weather was very changeable. At noon, the wind southwest, and increasing breeze, and strong sea; ship rolling heavily. 4 P. M., strong wind and sea; in staysails. 5 P. M., strong gale, with heavy squalls of wind and rain. 5:30 P. M., a heavy sea struck the ship; heaved on our beam ends; washing deck cargo adrift, and giving the ship a heavy list to starboard; got all hands up to secure deck cargo. Midnight, strong gale and heavy sea; wind northwest. 99

Q. How much of a list? A. About three streaks.

Q. That would be about 4 feet and a half? A. The list was over that. We came into New York with it; and it was that strong a list that it hove the compasses a point. We came into New York with this same list.

Q. You say you got all hands on deck to secure deck cargo? A. Yes.

Q. What deck cargo had you? A. Bay rum on deck.

Q. How much of it? A. I think there was two large hogsheads and twelve small casks.

100 Q. And you had some empty drums also? A. Yes, I think 20.

Q. Chemical drums. Where were they stowed? A. On the starboard side on deck.

Q. Where they loaded and stowed under the same supervision as the other cargo? A. Yes.

Q. For account of the charterers? A. Yes.

Q. And they stood all right until you got this list? A. Till the sea struck her.

Q. Were you able to go below that night to see what occasioned the list? A. No.

Q. What took place on the following day? A. Steering north by west; wind, northwest; strong gales of wind and heavy cross seas; ship laboring
101 and shipped heavy water on deck. At 4 A. M., ditto, wind and weather. Found cargo adrift in the holds. Six A. M., found deck pipe bolts torn out of the deck, winch cocks broke, and main rigging screw and rails broken. At 8 A. M. strong gales and heavy cross seas. Got all hands into hold and secured cargo to the best advantage.

Q. Were you below at all yourself? A. I was there all the time.

Q. Below? A. No. On the bridge.

Q. Where did they go below? Through which hatches? A. Through the No. 2 hatch.

Q. Didn't they go below aft? A. No; forward.

Q. Was there a big sea on at the time? A. Yes.

Q. And you still had this list? A. Yes.
102 Q. About four feet and a half, as you have already testified. What did you find accounted for that list, on going below? A. We found several casks of molasses broken.

Q. How was the condition of that that was not broken; shifted? A. Shifted.

Q. To the starboard side? A. To the starboard side.

Q. How long did you have the crew below there securing and stowing cargo? A. I think from 4 to 8 A. M. They were there from the time—(witness looks in log)—from 4 to 8 A. M.

Q. What precaution did you take to keep the water from going down while the crew were below there? A. The crew had lights down there, and we battened them down as soon as we got them down. They went from the fore part of the ship. From the forecastle they went right in. 103

Q. They did not open the main hatch? A. No.

By Mr. Black:

Q. Did you open the hatch? A. They went down the No. 2 hatch when the weather turned finer weather—when the weather turned moderate.

Q. The second time—later on? A. Yes.

By Mr. Kirlin: 104

Q. But the first time they went down through the forecastle? A. No; I think the first time they went down the No. 2 hatch, because I was on the upper bridge; the No. 2 hatch; and we then took one hatch off, and let one man go down at a time, and took lamps down, and battened it down.

Q. Did any water get in while they were going down? A. No, I don't think so; I wouldn't swear that any water got in; she had such a list, the water must go against the coamings.

Q. Did you go below in the after part of the ship to secure cargo? A. It isn't in the log, but I think they did the next day; but I don't think there was anything particular happened in the after hold. 105

Q. The cargo that was smashed up was in the forward hold, No. 2? A. Yes.

Q. That is the hold forward of the engine-room? A. Yes.

Q. How do you number the holds? From the bow of the ship aft? A. Yes.

Q. No. 1, bow; No. 2, just forward of the engine-room; No. 3, just abaft of the engine-room; and No. 4, aft? A. Yes.

Q. How did the weather continue to be on the afternoon? A. I have not finished the 23d. Strong gale and heavy sea at midnight.

106 Q. Had the securing of the cargo righted the ship at all, or did you have the same list continue? A. The same list continued.

Q. What was the weather on the next day, the 24th? A. Strong gales and heavy sea; shipped much water on deck; eased engines down slow; wind, southwest; course, northwest.

Q. How was it later in the day? A. Four A. M., ditto; wind and sea; 8 A. M., strong gale and heavy cross seas; eased engines; decks continually swept by the sea; the wind veering from southwest to north-northwest. It was like a boiling pot—the sea was like a boiling pot. The ship rolled and strained very much. Noon, same wind and sea. 1:30 P. M.,
107 sea swept the deck cargo overboard, breaking bulwark rails, and doing other damage above the decks; breaking ventilators, and washing water casks overboard. Deck cargo washed overboard: fifteen cask: of bay rum, and twenty-four drums. 6 P. M., weather moderating; strong sea; set away full speed. 8 P. M., less wind and strong sea.

Q. How much did you make on that day? A. 162 miles.

Q. How much did you make on the previous day, the 23d? A. 148 miles.

Q. What is your usual speed? A. 240 miles.

By Mr. Black:

108 Q. I see the entry at 8 A. M., "engines eased." What does that mean? A. Slowed down.

Q. And continued eased until 8 P. M.? A. Yes.

Q. That was on account of the severity of the weather? A. Yes.

By Mr. Kirlin:

Q. What was the weather on the next day, the 25th? A. Steering north-northwest; wind north by west; strong winds and sea. 4 A. M., moderate breeze, sea falling. Found rails and stanchions on starboard side badly bent and broken. 8 A. M., light

wind and fine weather. 11.30 A. M., fell in with the 109
schooner *Caleb S. Ridgeway*, waterlogged and abandoned. 8 P. M., light breeze east and fine. Compass course changed to north. Wind north-northwest. At 10 P. M., strong gale arose from the north-northwest. Midnight, strong gale and heavy seas breaking over the ship continually.

Q. Where were these stanchions and rails that you mentioned as being broken? A. Starboard side.

Q. Forward and aft? A. Aft and forward and all, all over.

Q. What kind of stanchions? A. Iron stanchions.

Q. Extending from where to where? A. Small stanchions; it was the spar deck. 110

Q. Stanchions to the rail? A. Yes.

Q. Go on? A. On Sunday, the 26th of February, opens with wind from the northwest, strong gale and heavy sea. Ship's decks constantly swept by the sea. 4 A. M., same wind and weather. 8 A. M., more moderate and less sea. Noon, fresh breeze and fine weather. Made Barnegat lighthouse to the north twelve miles. Got a New York pilot aboard. Passed lightship. Anchored at Staten Island 7.30 P. M.; on the 27th proceeded up the bay.

Q. Now, captain, on the 23d of February, you stated that the deck pipe bolts were torn out, and the deck winch cocks broken. Where were those deck-pipe bolts? A. In the after part of the ship. 111
I think there was one in the fore part; I think the carpenter put a wooden block in the next morning.

Q. The one in the fore part the carpenter put a wooden block in? A. Yes.

Q. That would be over the No. 2 hold? A. Yes; somewhere about that.

Q. How big a bolt? A. About the size of a finger.

Q. Where was the bolt that was broken in the after part? A. Starboard side aft.

Q. Over the No. 3 hold? A. Yes.

Q. Were those broken by the stress of weather?

112 A. It is by the sea catching the pipes. These pipes are covered, and when the sea gets underneath it it breaks the bolts sometimes. It draws them up or down.

Q. Were those sound when you left San Juan? A. Of course they were. They were refitted before we went away. They were refitted before we went away at New York.

Q. The ship was docked? A. No, she was not on the dock; but I had all the pipes in hand; the pipes were all split, and I had to put new steam pipes down. Generally the pipes were split to pieces.

Q. Then the pipes and bolts had all been renewed in New York? A. All renewed in January, before
113 sailing.

Q. Would those bolt holes, if open any considerable time, allow the taking in of any water? A. They were probably open all night.

Q. Was water on deck all the time? A. They were probably open all night; we didn't find them until morning.

Q. They were stopped up as soon as discovered? A. Yes.

Q. Where was the winch cock that was broken? A. It lets the water out. When you put steam on, he opens those cocks to let the water out.

By Mr. Black:

114 Q. Out of the cylinders? A. Yes. We call them drain cocks.

By Mr. Kirlin:

Q. Had they any connection with the hold? A. No. Just with the winch.

Q. 1 P. M., on the 24th: "Breaking ventilators; "sea came on board, breaking the rails, and doing "other damage about the decks, and breaking ven- "tilators, and washing over deck cargo and water "casks." What ventilators were those that were broken on that day? A. They were abaft; they go to the engineers' berths, I think.

Q. They had no connection with the hold? A. No. 115

Q. Were any of the ventilators leading to the hold broken? A. No.

Q. Or damaged? A. No.

Q. During the storms what precautions were taken to prevent the water from going down the ventilators? A. Covered.

Q. Were they turned to the wind? A. They were turned to the wind, and covered too. We generally put a cover on. They were put on very tight indeed.

Q. Are you able to say whether any water got down the ventilators? A. No, I don't think any water got down—unless they rose up a little bit, 116 and it got in between the bottom; but I don't think it did. That is the only way I could see. They are rather slack.

By Mr. Black:

Q. They revolve? A. Yes. It wouldn't go through the top, because it would be too high to go through the top. They might wash up a little drop in underneath, but I think not. We always keep one with grain cargoes and all.

By Mr. Kirlin:

Q. You have never had any damage before or since around the ventilators? A. No. 117

Q. Were the pumps attended to and soundings taken regularly on the voyage? A. Yes.

Q. Did you see that done yourself? A. No. The carpenter does that. He has got strict orders to do it.

Q. Did you see the carpenter making any soundings? A. Yes; and he has to show it to the engineer.

Q. Did you *see* the carpenter making any soundings on the way out? A. No. The mate will answer that.

118 Q. How old a ship is this? A. Seven years next month.

Q. Where was she built? A. Sunderland.

Q. By whom? A. By the present owners.

Q. John Blumer & Co. A. Yes.

Q. What is her tonnage? A. 1,232 tons net.

Q. Are these dimensions stated on the blue print, claimants' 4 for identification, correct. A. Yes.

Q. Length between perpendiculars, 270 feet? A. Yes.

Q. Beam 38 feet, depth of hold 26 feet 1 inch? A. Yes.

Q. Iron or steel ship? A. Steel.

119 Q. Was she in an entirely staunch and seaworthy condition in all respects when you sailed on the voyage? A. Yes.

Q. On arrival in New York, what did you find the condition of the cargo to be? A. We found that the molasses was all in the bottom of the ship, starboard side of the ship.

Q. How many broken casks was found in the 'tween-decks? A. I think 14 or 15.

Q. Was there any other cargo in the 'tween-decks besides molasses? A. Yes.

Q. What? A. Bagged sugar and coffee.

Q. This molasses, of course, was in hogsheads? A. Yes.

120 Q. Were there any hogsheads of molasses below? A. I couldn't say now; I couldn't really speak the truth.

Q. Do you know in which holds the cargo mentioned in the bills of lading were stowed? A. No. 2, I think.

Q. Both molasses and hogsheads of sugar? A. Yes.

Q. Did you find any broken hogsheads in the after 'tween-decks, either in No. 3 or No. 4? A. I don't know; I couldn't say, because I was not aboard; I was in the office at the time the surveys were held—

at least, I think so; I heard them saying so, but I never saw them—therefore I could not swear. 121

Q. Were the hogsheads all smashed, or the contents out? A. Yes; smashed.

Q. What was the cause of the list? A. There are many causes when a sea strikes a ship. On the voyage before, when I went down to Porto Rico, she shifted all the electric light machinery with a sudden jerk. It is all done in a sudden.

Q. You found the cargo shifted to starboard? A. Yes. It is done all at once.

Q. It is generally shifted at once? A. You can feel it when it is shifting.

Q. Where did you discharge the cargo? A. I don't know—a refinery here. 122

Q. Havemeyer's refinery? A. Yes.

Q. Where did you discharge the molasses? A. Part there, I think.

Q. And the other part at a dock in lower Brooklyn? A. Yes.

Q. How much molasses was gathered up from bottom of the hold? A. Oh, I should think about 30 or 40 tons I think there was about 40 tons in the lower hold.

Q. They gathered it up in hogsheads to take it ashore? A. Yes.

Q. Did they take it all ashore except the little that was lying around the bilges? A. I think they got it pretty well all ashore except the sweepings— 123
what we call the sweepings.

Q. Under whose supervision was the cargo unloaded and delivered? A. Their stevedores.

Q. The charterers' stevedores and delivery clerks? A. Yes.

Q. Was the purser still there? A. No. The purser went away the next day in another boat they call the *Chilian*.

Q. And it was attended to by the shore clerks of the charterers and their stevedores. Is that right? A. Yes.

124 Q. When are you going away? A. I leave to-morrow at 3 P. M.

Q. On the *Centurion?* A. Yes.

CROSS-EXAMINATION by Mr. Parkin:

Q. Captain, did you go down into the hold yourself after the cargo had shifted? A. No.

Q. And you did not, then, see any of the—— A. The chief officer—I sent the chief officer down.

Q. You don't know yourself, then, how the cargo was stowed? A. No.

Q. Do you know where the various parts of the cargo which you took on at these different ports were stowed—in what part of the ship? A. That is
125 a question I can't answer.

I can answer for the coffee and bagged sugar, because it was close to me; but for anything else I cannot—any further than looking from the deck.

Q. You carried an outward cargo, did you? A. Yes.

Q. And part of that was discharged at these different ports? A. Yes.

Q. And other parts were taken in, as you have stated? A Yes.

Q. Does your log show how much cargo and what cargo was taken in at each port? A. No.

Q. How many decks has your vessel? A. She has two decks, the upper deck and the 'tween decks.

126 Q. What are those decks? Are they wooden decks? A. No; iron decks; steel decks.

Q. How many hatches has she? A. Four hatchways and a bunker hatch. She has a little, small hatch abaft of the No. 2 hatch, where we put in spare bunkers.

Q. These hatches, of course, run right down through both decks to the hold? A. Yes.

Q. Are there not sometimes on ships small hatches made at the sides of the decks in the 'tween-decks? A. Yes.

Q. Have you any such hatches as that on your deck? A. Yes; we have two.

Q. Whereabouts are those? A. Below the little 127
hatch abaft No. 2 hatch.

Q. (Claimants' Exhibit 4 for identification shown witness.) In the middle plan, which is the main deck plan, there are marked at the sides about midships the words "hatch"? A. Yes.

Q. What are those hatches? What do they call those hatches? A. These are bunker hatches.

Q. Those are for coal? A. Yes.

By Mr. Kirlin:

Q. They lead into the coal bunkers? A. Yes. This is the coal hatch I am talking about. (Indicating.) Then there are two hatches. When we make a long passage we build bulkheads 128
in the lower hold; but for Porto Rico we only have bulkheads in the 'tween-decks. That is an extra bunker. The small hatches are properly closed up—these two small hatches are properly closed up and caulked on account of not taking in coals in the lower bunker. *This* is the deck hatch the coals go down (indicating.) These little hatches that I speak of in the 'tween-decks underneath the small coal hatch on the top deck are used for letting coal down from the spare bunker in the 'tween-decks into the lower hold, if required; but when we have no coal in the lower hold, the two little coal hatches in the 'tween-decks are closed up and properly caulked and bat- 129
tened. The coamings around are just angle-iron high (indicating about five inches). On the West India voyage we carry no coal in that lower hold; we carry cargo there.

By Mr. Parkin:

Q. Where are the bulkheads? A. Between these two holds; between Nos. 1 and 2, and between Nos. 3 and 4. At the same time there is no bulkhead in the 'tween-decks—only in the lower hold.

130 Q. Only in the lower hold is the bulkhead? A. Yes.

Q. Does the bulkhead run right down to the bottom of the vessel? A. Right down to the bottom.

Q. Do they cut off all communication? A. Yes; between each hold.

Q. Do these bulkheads separate the water in the bilges? A. No.

Q. There is free communication, is there, fore and aft? A. Yes.

By Mr. Kirlin:

Q. Through what? A. Through the bilges.

Q. Sluices? A. Yes.

131

By Mr. Parkin:

Q. How many pumps have you? A. I think we have four.

Q. Where are they situated? A. There is one each side of the bridge and one forward and one aft, but they are never used—those pumps.

By Mr. Kirlin:

Q. Those are hand pumps? A. They are hand pumps. It is all machinery now; we do it all with machinery now.

By Mr. Parkin:

132 Q. Where are the machine pumps—the steam pumps? A. You will have to ask the engineer that question.

Q. You don't know about that? A. No.

Q. Where do these hand pumps which you mention run? Are they amidships? A. No. On the side.

Q. At the side? A. Yes. Two bilge pumps on the side of the ship alongside of the bridge, and a pump forward amidships, and a pump aft amidships. It is to pump water out of the bilges.

Q. By the bilges you mean the curve of the bot-

tom of the vessel where it begins to curve to come up the side? A. Yes. It goes down exactly the side of the ship. Two pumps go down the center of the ship, and two on the side. 133

Q. Do you know whether those bilge pumps were operated, or partially operated, during this voyage? A. No, I don't think so.

Q. You don't think they were? A. No. Of course, we have bilge pumps in the engine-room as well.

Q. Do you know whether the pumps you have last mentioned were operated during the voyage? A. No, I am sure they were not—not the bilge pumps on deck.

134

By Mr. Kirlin:

Q. He asks you whether the bilge pumps in the engine-room were worked? A. Yes, of course; the bilge pumps in the engine-room were working. They are always working. Every time the engines go along they work.

Q. They are automatic? A. Yes.

Q. And attached to the engines? A. Yes.

By Mr. Parkin:

Q. Do you know at all how the hogsheads of molasses were stowed—whether they were lying across the ship or whether they were lying fore and aft? A. Now, I couldn't say. No, I don't think they would cross them. Fore and aft. 135

Q. You don't know? A. I don't know. The mate would be the best one to say that, because the mate is to go down there sometimes—the second mate; but you never put casks across the ship—that is bad stowage.

By Mr. Black:

Q. Captain, isn't your vessel what they call a "well" vessel. That is, does it have a house on deck in the center, and a raised forecastle forward,

136 and a hollow space in between those two? A. No. Spar deck right fore and aft.

Q. Are not the officers' quarters in a house on deck? A. No. Nobody lives on deck; all below.

Q. The vessel has a house on deck of some kind, hasn't she? A. Yes, over the wheel aft.

Q. Is there a bulkhead at each end of the engine-room? A. Yes.

Q. Extending from the main deck down to the keel of the vessel? A. Yes.

Q. And the other bulkheads between the holds extend from the between-decks down? A. Yes; and those are wooden bulkheads in the hold.

Q. But the engine-room bulkheads are steel,
137 aren't they? A. Yes, steel; water tight.

Q. Now, I understand that you visited these various ports, and not only took in cargo there, but also discharged cargo there? A. Yes. You are quite correct.

Q. And the cargo which was taken in at the different ports had to be stowed with reference to the cargo already in the ship, hadn't it? A. Yes.

Q. This cargo which was claimed to be damaged was taken in at Ponce altogether, wasn't it? A. No. At another port, I think; Arroyo, I think.

Q. The molasses was taken in at Ponce? A. The first of it.

Q. Are there two different lots of molasses? A.
138 Yes.

Q. At two different ports? A. Yes.

Q. The molasses that is claimed to be damaged here was all taken in at Ponce? A. Yes.

Q. You were only in there once? A. I was only in it once.

Q. State the ports you visited on your outward voyage, at which you discharged and took in cargo, in the order in which you went to those several ports. A. San Juan, Aguadilla, Mayaguez, Ponce; and all the cargo was discharged at Ponce.

Q. Your vessel was emptied there? A. Yes, she was all discharged there.

Q. You now state that at Ponce all that you had 139
taken out was discharged? A. Yes.

Q. And then you had also taken in at San Juan, Aguadilla and Mayaguez? A. No, we took nothing in at San Juan; only at Aguadilla.

Q. And Aguadilla was the first port of your first loading? A. Yes.

Q. And there you took in only coffee? A. Only coffee.

Q. And you had taken in at Mayaguez? A. No.

Q. Then you reached Ponce and there discharged all of your outward cargo? A. Yes.

Q. And there you took on board some sugar and this molasses? A. Yes.

Q. Whereabouts was this molasses stowed? A. 140
It was stowed in the 'tween-decks, in the No. 2 hold. I don't think it was all there; I couldn't say; I don't think it was all placed there—all the molasses.

Q. Were the entire 250 casks of this lot of molasses stowed in that one hold in the between decks? A. I couldn't say.

Q. Who can tell us that? A. The mate, I expect —or Maloney could tell you best.

Q. You knew of this molasses being put in this between-decks? A. Yes.

Q. Did your men assist in receiving that cargo? A. No, just lifted it out; lifted it over the side, that is all.

Q. Whereabouts was this deck cargo, under the 141
bridge? A. Underneath the boats. There is no bridge; she is all open; but we call that under the bridge; the boats stand up so far from the deck, you see (indicating the height of a man's head). She is all open, right fore and aft.

Q. And it was stowed in a location that brought it under the bridge? A. Yes; underneath the boats.

Q. Was it abreast of the smokestack or forward of the—— A. Just abreast of it.

Q. Abreast of the smokestack? A. Yes.

Q. At each side of the vessel, or on one side? A. No, along each side.

142 Q. Where was this deck cargo taken aboard? A. We proceeded from Ponce to Humacao, and the next port was Yubacao.

By Mr. Kirlin:

Q. That is where you took on deck cargo? A. I think so; yes, it was.

By Mr. Black:

Q. This deck cargo consisted of fifteen casks of bay rum? A. Yes.

Q. And twenty-four iron drums? A. No; I didn't get the drums there.

143 Q. You only got on board the bay rum? A. That is all.

Q. Was it divided in two lots so as to be stowed in both sides? A. No; it was stowed on one side.

Q. Was it properly stowed? A. Yes.

Q. Properly secured? A. Properly lashed.

Q. Where did you take on board the iron drums? A. Mayaguez.

Q. There were twenty-four of those? A. Yes.

Q. Were they empty drums? A. Yes.

Q. Where were those stowed? A. On the starboard side, in the same position of the ship.

Q. The bay rum on the port side and the drums on the starboard side? A. Yes.

Q. Were they properly stowed? A. Yes.

144 Q. Were they properly secured? A. Yes.

Q. Whereabouts was it you took on board your iron drums? A. Mayaguez. We have to come back.

Q. Was that the next port after Yubacao? A. No.

Q. What was the next port after Yubacao? A. Arroyo.

Q. And then? A. Guayanilla.

Q. And next? A. Mayaguez.

Q. And then? A. Arecibo.

Q. And then? A. San Juan.

Q. So you were twice in San Juan and twice in Mayagnez? A. Yes. 145

Q. This No. 2 hold is the one into which the main hatch opens, isn't it? A. Yes.

Q. And when that main hatch is open a good deal of the No. 2 hold is visible of the between-decks, isn't it? A. Yes, all of it.

Q. Could you see down into that between-decks of the No. 2 hold so as to see the manner in which these hogsheads of molasses were stowed? A. Yes; you can see from the small hatch, you know.

Q. I am asking whether you could see? A. Yes.

Q. Which small hatch do you speak of? A. That coal bunker hatch; that little hatch abaft the No. 2.

Q. Was that open so you could see down into that? 146
A. Yes.

Q. With your means of observing, could you form an opinion as to whether that cargo of molasses which was put into that between-decks was properly stowed.

Mr. Parkin: Objected to.

A. From the deck, of course; I could see it was very well stowed, from the deck, what I did see.

Q. And you could see a great deal of it, couldn't you? A. I could see it all.

Q. In which hold was the sugar which was taken on board at Arroyo stowed—the 465 hogsheads? A. I think that was the No. 2 hold.

Q. Was that in the between-decks or the lower hold? A. In the lower hold. 147

Q. Could you see the way in which that was stowed? A. Yes, to a certain extent you could. From the deck. I am only giving you from the deck.

Q. Of course. From what you saw, would you say that that cargo was properly stowed, or not? A. I would say it was properly stowed with sugar in the lower hold.

Q. Now, come to the time you met this bad weather, and had all this sea washing about your

148 decks. Will you tell me what kind of weather you call that—whether it was moderate, or very heavy, or ordinary weather to be expected at that season of the year?

Mr. Parkin: Objected to.

A. It was very bad weather.

Q. Unusually bad? A. Unusually bad.

Q. Would you call it an extraordinary bad voyage or not? A. Yes, of course I should say so, the wind changing to so many points of the compass, and the sea was also——

Q. Breaking? A. Yes, breaking—the sea was breaking—just like boiling water.

149 Q. You have spoken of it as if it was a boiling tea-pot? A. Yes.

Q. What do you mean by that? That the waves were breaking and rolling? A. Breaking and flying up, just like boiling water—just like a pot of beans.

Q. Was your ship rolling very heavily, or not? A. Very heavily.

Q. What was it that first brought to your attention that the cargo in the hold was adrift? A. By hearing the sound.

Q. What sound did you hear? A. A thudding sound.

Q. You mean a hammering or pounding going on? A. Yes.

150 Q. And from the sound that you heard did you form an opinion as to whether the cargo was much adrift or only a few pieces? A. I thought it was adrift a good deal.

Q. Had the vessel got her list at the time you heard this thudding sound or did it come afterwards? A. It came afterwards.

Q. You yourself did not go into that hold?. A. No.

Q, Nor see into it at that time? A. No.

Q. Did you when you arrived in New York see in it? A. No.

Q. You were not there at the discharge? A. I 151
was not there; I was in the office—they wanted me at the office.

Q. How did you know that the vessel had this quantity of molasses in the lower hold which you have spoken of—thirty or forty tons? A. Because of the list the ship got.

Q. How did you know? A. They were pumping it out.

Q. Pumping it from where? A. From the hold.

Q. How did you know it was being pumped from the hold? A. The engineer pumped it.

Q. Did you see the molasses coming up yourself? A. Yes.

Q. And being thrown overboard into the sea? A. 152
Yes.

Q. Running out? A. Yes, from the discharge; we saw it from the discharge pipe.

Q. And how long did that pumping go on—during what part of the voyage? A. As long as the weather—as long as the ship kept heated inside, you understand, and the molasses kept thin it came through the pumps, but as soon as we got into cold weather we could not get any at all; it remained there.

Q. Some of the cargo shifting occurred on the 23d of February and you arrived in New York on the 27th. Can't you tell me how many days you noticed this pumping of molasses going on? A. I think on 153
the first and second day I observed it. At least, I never observed it, but just what the engineer said. He said: "Look over the side and you will see the "molasses coming out," and I looked over.

By Mr. Kirlin:

Q. What day was that? A. The 24th, I think.

By Mr. Black:

Q. That was the day after the shifting of the cargo? A. Yes.

154 Q. You have told us that the winch cock was broken? A. Yes.

Q. What caused the breaking of the winch cock? A. One of the casks of bay rum rolling along the decks before it smashed up.

Q. You have told us that there were some of the deck pipe bolts broken out. What caused that? A. The casks and sea together. I couldn't get any of the men to go near to handle them.

Q. Had the deck cargo broken adrift at the time of the deck pipe being broken and the winch broken? A. The deck cargo was the cause of all that mischief on deck.

Q. Was that deck cargo secured afterwards? A.
155 Part of it.

Q. Did any of it go adrift the day that the winch cock and the deck pipes were broken? A. It all went adrift--about ten, or nine, of these small casks went adrift.

(Question repeated.) A. It was through the deck cargo being adrift that those winch pipes was broken—and bolts.

Q. Was all of that deck cargo secured after it had first got adrift? A. Yes.

Q. And then it got adrift again the second time? A. It got adrift the second time. No, we didn't save it all the first time. We saved the two biggest casks; we put them on their ends; we got them over
156 the ends; that was the only thing that was saved, and four of the small ones.

Q. How many of those casks were there altogether? A. I think there was a dozen small and two large.

Q. Now, you have told us that fifteen casks washed overboard on the 24th, which was the day after the winch pipe was broken? A. They didn't all go overboard, because I picked one up, and I put it between the winch myself.

By Mr. Kirlin:

Q. Did you bring any of that deck cargo to New York? A. Yes.

Q. How much? A. Two big casks. 157

By Mr. Black:

Q. Is it true that fifteen of those casks went overboard? A. Not fifteen; I don't think there were fifteen altogether.

Q. Look at your log, on the 24th. A. Of course he would know better than me. (Witness turns to log, on the 24th, and read): "Deck cargo washed "overboard, 15 casks bay rum, 24 drums iron." Those would be the small casks of bay rum.

Q. There must have been 15 casks of the small casks? A. Yes, I thought there was only a dozen.

Q. And two big ones? A. Yes.

Q. Then they must have broke adrift twice? A. 158
Yes.

Q. After you secured them the first time? A. After we secured them going out of port, they broke adrift; and then the next day, at noon, when she hove to, they broke adrift the second time.

Q. What caused them to break adrift? A. The water coming over the deck.

Q. Couldn't you secure them to protect them from that sea? A. No. She is all open, just like this chair, on the deck. (Witness indicating.)

Q. You did your best to secure them, I suppose? Of course, we did.

Q. I understand you to say that this was the first voyage you made under this charter? A. Yes. 159

Q. Had you yourself ever made West India voyages before? A. No, never.

Q. Was your vessel in proper trim for the voyage? A. Yes, she was in good trim.

Q. She was not too deeply loaded? A. No.

Q. And she was properly buoyant by the distribution of the weights? A. Oh, yes.

Q. You did not have too much dead weight below to make her roll? A. No.

Q. If you had carried a greater weight below, would the vessel have rolled more than she did? A. Of course.

160 Q. And for the voyage you made, and with the cargo you had, was the cargo properly distributed, in your judgment? A. Properly. She was 18 feet and 16 feet. We always keep her two feet by the stern.

REDIRECT:

Q. Is the 'tween-deck plan shown on the blue print? A. Yes.

Q. Which one is it? A. The middle plan. (Witness indicating on Claimants' Exhibit 4 for Ident.) And the lower one is the main deck.

Claimants' counsel offers in evidence the blue-
161 print plan of the steamer, previously marked for identification. It is now marked Claimants' Exhibit 4, April 12, 1893.

RECROSS by Mr. Black:

Q. Do you have stanchions in your between-decks? A. Yes.

Q. What space apart are they? A. Well, now, I couldn't say. We have double stanchions and all sorts of stanchions in it.

Q. Are there coamings around the hatches in the between decks? A. Yes.

Q. Are there scuppers? A. Yes.

Q. Where do the scuppers in the between-decks lead to? A. Into the engine-room.

162 Q. I understand that the between decks is a steel deck? A. Steel deck.

Q. And when any liquid surface comes out on that steel deck of the between-decks, where does it go to? A. It goes through four scuppers.

Q. Into where? A. Into the bilges.

By Mr. Kirlin:

Q. And the bilges lead into the engine-room? A. Yes.

Q. And you were in error in stating that the scuppers lead into the engine-room? A. Yes. When I

say the bilges—if you will look at the plan, you will see one right close into the bulkheads. There is the engine—the fore part and the after part of the engine-room (witness indicating). 163

Q. The scuppers lead into the bilges, and the bilges into the engine-room? A. Yes. The pipe leads into the engineer's berth in there.

By Mr. Black:

Q. How high are the coamings of the hatches in the between-decks? A. One foot five inches.

Q. Did that between-deck have hatches? A. Yes.

Q. Were those hatches on? A. Yes.

Q. What kind of hatches? Wooden? A. Wooden hatches. 164

Q. Were they covered as well? A. No; just the hatches; we never cover them.

Q. You do not cover those hatches? A. No.

Q. Now, if any of the molasses leaked along in the between-decks where would it go to? A. Go to the bilges through those scuppers.

Q. Were there any bags of sugar under the molasses in the between-decks? A. No.

Q. Were there any hogsheads or packages of sugar under the molasses in the between decks? A. Yes, there was hogsheads of sugar.

By Mr. Kirlin:

Q. In the between-decks? A. No, not in the between-decks. 165

By Mr. Black:

Q. Were there any hogsheads or packages of sugar under the molasses in the between-decks? A. None whatever.

By Mr. Parkin:

Q. What is the height of the 'tween-decks? A. About 8 feet.

166 By Mr. Kirlin:

Q. What kind of flooring is over the bilges in the lower hold? A. She is all planked fore and aft —planked right from stem to stern, engine-room and all.

By Mr. Black:

Q. Full width of the vessel? A. Yes.

By Mr. Kirlin:

Q. Could anything from the bilges get up to the cargo? A. No, not at all, unless there is an overflow on top.

Q. How would it get on the top? A. It gets into
167 the bilges then. We lift our bilges up, you understand—all along the vessel, in the bilges, we lift it up. The sugar and molasses went in when the bilge planks were up. But if anything gets on top, then it goes into the bilges mostly. We leave it open in the bilges.

Q. You leave the covers of the bilges open? A. Yes.

Q. For the purpose of allowing drainage? Is that it? A. Yes.

By Mr. Black:

Q. What kind of covers are those? A. Wooden ones.

168 Q. You leave the cover open which leads directly into the bilges? A. Yes.

Q. It would be the same as what we call the limber streak in the vessel? A. It is the limbers.

By Mr Kirlin:

Q. If a large quantity of molasses leaked down through the scuppers in the 'tween-decks, the bilges could overflow, and the molasses rise in amongst the cargo in the hold? A. Yes; that is just the way, sir, it is done.

Q. Is that the way the molasses got to the cargo in this case? A. Yes, I think so.

By Mr. Black: 169

Q. You said that this list was so much that it produced a whole point of deviation of your compass? A. Yes.

Q. Was that something extraordinary or not? A. I think it was.

Q. Could you give us about what angle that list was? A. I wouldn't say it was 45; that is too much.

By Mr. Kirlin:

Q. Didn't you say there were three plates list? A. No; three streaks. Three streaks is the same as three planks of a wooden ship.

By Mr. Black: 170

Q. Tell us how much was the angle of the list? A. I don't like to say; I couldn't exactly say, because I might have seen it if I had put my instrument on.

Q. Don't you have one of those clinometers, they call them, in the engine-room? A. Yes; but I never tried it.

Q. Give an idea? A. A point will be 11¼.

Q. Take a piece of paper, and draw the angle at which your deck lay? A. I say three feet when I first came in, and she was all that. We had better say three feet.

Q. Three feet down on one side? A. Yes—and she came into New York with it. We might have ascertained then, if we thought there would have been any question. We would have taken all precautions. 171

Q. Did the deck cargo have anything to do with giving that list? A. Nothing at all.

Q. Nor the loss of it? A. Nothing at all—not the slightest.

By Mr. Parkin:

Q. Did she have any list when she left? A. No. Upright as a dish.

Q. What was her draught? A. 18 and 16.

172 Q. 18 aft and 16 forward? A. Yes.

Q. Did you see at all how this molasses was stowed? A. I didn't see it.

Q. You didn't see it at all? A. I didn't see it—it is no use my telling you a story.

Q. You don't know how it was stowed when you left? A. No, I don't know how it was stowed, because the purser was there all the time it was stowed.

Q. And you don't know anything about that at all? A. No.

By Mr. Black:

Q. You do not mean to say you did not look down
173 the hold and see it? A. Of course, I looked down and saw it.

Q. You have no criticism to make on this stowage? A. I am too old to go down those holds.

Q. You have no fault to find with the stowage? A. No; I don't find any fault with it; I do not see anything wrong with the stowage. I saw the casks and I thought it looked very well to the eye from the deck.

By Mr. Parkin:

Q. But you don't know what was done to keep them in their place, or anything about that? A. No.

174 By Mr. Black:

Q. Were there any permanent shifting boards on your steamer? A. Yes.

Q. Run right in the between-decks? A. Yes. There are no shifting boards between-decks, but in the lower hold, clear of the hatchway; they still remain in the ship.

Q. But none in the between-decks? A. No.

Q. You say that you eased the ship from 8 A. M. to 8 P. M. on the 24th? A. Yes.

Q. And you told us that by "easing" you meant you put her half-speed? A. Slow.

Q. How much was slow? A. About four knots. 175

Q. How much was full speed? A. Ten.

Q. How much was half-speed? A. Five.

Q. And what was the reason for easing her during that length of time? A. The sea; the weather.

Q. Had she got her list at that time? A. Oh, yes; she had got her list then.

Q. Did the list occur immediately at the time you heard this thumping in the hold or after that? A. Let me see. No, after the thumping.

Q. What made you know there was a list? A. The leakage of something, which I supposed would be molasses.

Q. That would indicate to you that the molasses had leaked more out of one side than it had out of 176 the other? A. Yes.

Q. Not that it had leaked evenly all around? A. No.

Q. It must have been a leakage on the port side, which lightened that side up? A. Yes.

Signature of witness waived.

ROBERT CHASTNEY, called on behalf of claimants, being duly sworn, testifies as follows:

DIRECT-EXAMINATION by Mr. Kirlin:

Q. What is your business? A. I am chief mate on the *Centurion*.

177

Q. What kind of certificate do you carry? A. Captain's.

Q. How long have you had it? A. I have had it since 1868.

Q. Have you commanded steam vessels? A. Yes.

Q. How long have you been going to sea in steam vessels? A. About eight years.

Q. Have you ever been in the Porto Rico trade before this? A. No; never before.

Q. How long have you been in the *Centurion?* A. About nine months.

178 Q. Have you been continuously on since then during that time? A. All but about three weeks.

Q. Were you on board when she was delivered to the Porto Rico Steamship Company under charter last winter? A. Yes.

Q. Did you go on the voyage from here there and return? A. Yes.

Q. On which you had this molasses and sugar damage? A. Yes.

Q. What kind of cargo did you carry outward? A. Mixed cargo—general cargo—provisions.

Q. What did you bring back? A. Sugar, and molasses, and coffee, and annato seed.

Q. Did you keep the log book? A. Yes.

179 Q. Are the entries all in your handwriting? A. All in my handwriting.

Q. Were they all made on the days when they are dated? A. Yes, except when it was too bad weather, sometimes; they were all as near as could be on the same.

Q. Sometimes the weather was too bad to write? A. Sometimes too bad to write.

Q. What did you do then? Make your notes, and put them in when the weather cleared up? A. We made a note every four hours in a small book.

Mr. Kirlin: Have you, gentlemen, any objection to the admission of the log?

Mr. Black: I have not.

180 Mr. Parkin: Well, put it in.

Mr. Kirlin: I offer in evidence the entries, beginning from the time of the arrival of the steamer on her outward voyage in Porto Rico until she finished discharging cargo in New York on her return voyage.

Chief Officer's Log of the Steamship "Centurion." 181

Laying at St. John, Porto Rico.

Sunday, 29 day of January, 1893.

A. M. Light Breezes and Showery.

8 A. M. " wind and weather.

1 P. M. Commenced to discharge cargo out of No. 1, 3 and 4 Holds and worked up to 6 P. M.; three of crew at winches.

P. M. Fine weather.

Daniel Eavens keeping night watch.

Midnight. do. weather.

Monday, 30 day of January, 1893.

A. M. Light Breeze and fine weather. 182

At 6 A. M., Commenced with the discharging and worked up to 6 P. M. out of all Hatchways; found hatch comb bent and Stanchions and ladder broke in No. 2 Hatch with the cargo shifting on the 19 January.

P. M. Light Breeze and rain.

Daniel Eavens keeping night watch.

Tuesday, 31 day of January, 1893.

A. M. Light wind and fine weather.

At 6 A. M. commenced with the discharging out of all Hatchways and worked up to 5.30 P. M.

Cargo all out No. 3 at noon.

P. M. Cargo all out No. 4 at 3 P. M. 183

Daniel Eavens keeping night watch.

P. M. Fine weather.

Wednesday, 1 day of February, 1893.

A. M. Light wind and fine weather.

At 10.30 A. M. St Johns cargo all discharged.

Got No. 1 Hold ready for Sugar.

1 P. M. Commenced to take in cargo and finished at 4 P. M.

5.20 P. M. Pilot on board, up anchor and proceeded out of Harbour, & Pilot left full speed. 6.25 set log and eased to half speed.

184 Midnight. Light breeze and clear. Log, 47 miles.

From St. John towards Aquadilla.

Thursday, 2 day of February, 1893.

A. M. Light Breeze and fine weather.

1.30. Eased Engine to slow.

3. Stopped Engines.

7 A. M. Achored in 7½ fathoms off Aquadilla. Got Pratique.

But no work on cargo, this day being a holiday on shore.

Crew employed painting and other work.

P. M. Light breeze and cloudy weather.

185

Laying at Aquadilla, Porto Rico.

Friday, 3 day of February, 1893.

A. M. Light wind and rain.

6 A. M. Commenced discharging the Aquadilla cargo. Strong rolling sea coming into the Bay.

Noon. Showery.

4 P. M. finished the discharging and at 5 P. M. commenced taking in return cargo of coffee.

Crew employed painting and other work.

9 P. M. Showery.

Daniel Eavens keeping night watch.

Midnight, do. weather.

186 *From Aquadilla to Mayaguaza, Porto Rico.*

Saturday, 4 day of February, 1893.

A. M. Light wind and fine weather.

At 3.30 A. M. Up anchor and proceeded towards Mayaguaza. 6.45 A. M. Got pilot on board and 7 A. M. anchored in Mayaguaza. Commenced to discharge cargo at 7.30 A. M.

11 A. M. Showery. Noon do.

2 P. M. Heavy rain, very little cargo discharged this afternoon.

Daniel Eavens keeping night watch.

P. M. Light wind and showery.

Laying at Mayaguaza, Porto Rico. 187

Sunday, 5 day of February, 1893.

A. M. Light breeze and cloudy.

6 A. M. Commenced discharging out of No. 2 and 3 holds.

All lighters load at 11.30 A. M. No more work.

2 P. M. Commenced to rain and rained to 4.30 P. M.

Daniel Eavens keeping night watch.

P. M. Cloudy weather.

Laying at Mayaguaza, Porto Rico.

Monday, 6 day of February, 1893. 188

A. M. Light breeze, and fine weather.

At 6 A. M. Commenced with the discharging.

10 A. M. No lighters.

Noon. Cloudy weather.

2 P. M. Mayaguaz cargo all discharged. Employed cleaning up holds and getting ready for sea.

5 P. M. Pilot on board, up anchor and proceeded towards Ponce. 5.30 P. M. Set the log. 5 buoy abeam. Cloudy weather.

8 P. M. Moderate breeze and clear.

10.20 P. M. Cape Rego north 4 miles.

Midnight. Strong breeze. Log 48 miles.

At Ponce, Porto Rico. 189

Tuesday, 7 day of February, 1893.

1.40 A. M. Eased engines to slow.

4 A. M. Fresh breeze and fine weather.

6 A. M. Got pilot on board and anchored in Ponce; at 6.10 all ready to discharge. Waiting for lighters a part of the day.

Noon. Strong breeze and showery.

Finished discharging for the day at 5.45 P. M.

Daniel Eavens keeping night watch.

Midnight. Light breeze and fine weather.

190 Wednesday, 8 day of February, 1893.

A. M. Light breeze and fine weather.

At 6 A. M. Commenced to discharge out of No. 3. No lighters for No. 3 until 7 A. M.

Cargo all out of No. 2 at noon. Cleaned bilges.

Commenced taking in sugar into No. 1 at 4.30 P. M., and worked up to 8 P. M.

P. M. Light breeze and fine weather.

Daniel Eavens keeping night watch.

Thursday, 9 day of February, 1893.

A. M. Light breeze and rain.

6 A. M. Commenced with the discharging, and cargo all out at 10.30 A. M.

191 9 A. M. Taking in cargo at No. 2 and 3, and worked up to 11.30, when all the cargo was on board.

After cargo all on board at 8 P. M.

11.30. Pilot on board, up anchor and proceeded to sea. 11.50 P. M., pilot left the ship. Set course as required.

Ponce to Huemecay, Porto Rico.

Friday, 10 day of February, 1893.

A. M. Strong breeze.

Steaming towards Huemecay.

8.15, got pilot on board and anchored at Huemecay bay; received some cargo on board, and at noon up anchor and proceeded towards Yubaca, and anchored at 1.15.

192 2 P. M. Heavy rain. Commenced to take in cargo at 3.30.

6 P. M. Finished with the cargo.

8 P. M. Strong wind and showery.

Lying at Yubacay, Porto Rico.

Saturday, 11 day of February, 1893.

A. M. Strong wind and heavy squalls of wind and rain.

8 A. M. Strong wind and heavy squalls. Could not get the cargo off to the ship, only 108 bags of sugar.

11.30 A. M. Up anchor and proceeded towards Arroyo. At 2 P. M. received pilot on board and anchored in 3½ fathoms. 193

4 P. M. Commenced to take in cargo and worked up to 8 P. M.

8 P. M. Heavy rain.

11 P. M. Do. weather.

Laying at Arroyo, Porto Rico.

Sunday, 12 day of February, 1893.

A. M. Strong wind and rain.

At 6 A. M. commenced to take in cargo. Strong wind and heavy squalls of wind and rain. Worked up to noon, when the lighter men would not work any more. Put hatches on. 194

2 P. M. Strong wind and rain squalls.

P. M. Do. wind and weather.

Monday, 13 day of February, 1893.

A. M. Strong wind and showery.

At 6 A. M. commenced to take in cargo. Heavy rain squalls at times.

Noon. Do. wind and weather. Cargo coming very slow. Worked up to 9 P. M.

P. M. Strong wind and rain.

Midnight do. wind and weather.

From Arroyo to Guayanilla. 195

Tuesday, 14 day of February, 1893.

A. M. Light breeze and showery.

6 A. M. Commenced with the cargo.

11.20 A. M. Cargo all on board.

11.40 Up anchor and proceeded towards Guayanilla.

4. Anchored at Guayanilla and commenced to take in cargo and worked to 11 P. M.

P. M. Fine weather.

196 *From Guayanilla to Mayaguez.*

Wednesday, 15th day of February, 1893.

A. M. Light wind and fine weather.

6 A. M. Commenced to take in cargo.

10 A. M. The cargo on board, up anchor and proceeded towards Mayaguez.

12.30 rounded lighthouse.

4 P. M. Anchored at Mayaguez and commenced to take in cargo at 4.50 P. M.

Working cargo at midnight.

Laying at Mayaguez, Porto Rico.

Thursday, 16th day of February, 1893.

197 A. M. Light wind and fine weather, working cargo to 2 A. M.

At 6 A. M. Commenced to take in cargo.

Noon. Light breeze and fine weather.

3 P. M. All the cargo on board.

At 5 P. M. Pilot on board, up anchor and proceeded towards Arecibo.

Going slow all night.

P. M. Fine weather.

Mayaguez towards Arrecibo, Porto Rico.

Friday, 17 day of February, 1893.

Light breeze and fine weather.

At 6 A. M. Anchored at Arrecibo. Commenced to
198 take in cargo.

2 P. M. Strong wind and heavy sea rolling into the anchorage.

Worked up to 5.30 P. M. at cargo.

Midnight fine weather.

Arrecibo towards St. John, Porto Rico.

Suturday, 18 day of February, 1883.

A. M. Light breeze and fine weather.

Commenced with the loading at 6 A. M.

At 10 A. M. All cargo on board, up anchor and proceeded towards St, John.

2.30 P. M. Anchored at St. John and commenced 199
to take in cargo and worked up to midnight.

P. M. Fine weather.

Pumps, Lights, Log and Lookout attended.

Laying at St. John.

Sunday, 19 day of February 1893.

A. M. fine weather.

At 5.30 commenced with the loading.

Noon, working at cargo.

2 P. M. all cargo on board.

3.20 P. M. Pilot on board, up anchor and proceeded to sea. 3.40 pilot left. Full speed ahead towards New York. Set fore trysail and staysails. 200
Hatches all secured.

8 P. M. Distance run 33 knots. Steering compass N. by W. Wind S. E. Light breeze and fine weather.

Midnight. Distance run 71 knots. Do. wind and weather.

Pumps, lights, log and lookout strictly attended.

From St. John, Porto Rico, towards New York.

Monday, the 20 day of February, 1893.

A. M. Light wind and fine.

4 A. M. do. do. Distance run 110 knots.

8 A. M. do. do. weather. Distance run 144 knots. 201

12 noon, light breeze. Distance run 184 knots.

Steering compass course N. by W. Wind N. W.

4 P. M. Wind shifted to N. N. E.; in all sail; rain at times. Distance run 219 knots.

8 P. M., fresh breeze and cloudy weather. Strong head sea. Distance run 257 knots.

Midnight do. wind and weather. Distance run 290 knots.

Pumps, lights, log and lookout strictly attended to.

202 Tuesday, 21 day of February, 1893.

1 A. M. Light breeze and strong head sea. Steering compass course N. ¾ W. Wind N. E.

4 A. M. Do. wind and weather. Strong head sea. Distance run 323 knots.

8 A. M. Do. wind and sea. Distance run 356 knots.

12 noon. Fresh breeze and strong head sea. Shipping much water on deck. Distance run 386 knots.

4 P. M. Do. wind and sea. Distance run 413 knots. Crew painting boats, &c.

6 P. M. Wind E. Set fore trysail and staysails.

8 P. M. Moderate breeze and fine weather. Distance run 454 knots.

203 Midnight, do. do. Distance run 488 knots.

Pumps, lights, log and lookout strictly attended to.

Wednesday, 22 day of February, 1893.

Steering compass course N. by W. Wind S. E.

A. M. Fresh breeze and cloudy.

4 A. M. Do. wind and weather. Strong head sea. Distance run 527 knots.

8 A. M. Light breeze and cloudy. Distance run 563 knots.

10 A. M. Wind S. W.

Noon. Increasing breeze and strong cross sea. Ship rolling heavy. Distance run 600 knots.

204 4 P. M. Strong wind and sea—in staysails. Distance run 634 knots.

5 P. M. Strong gale with heavy squalls of wind and rain. At 6.30 P. M. a heavy sea struck the ship, heaving her on her beam ends, washing deck cargo adrift and giving the ship a heavy list to starboard. Got all hands up to secure deck cargo.

8 P. M. Distance run 660 knots.

Midnight. Strong gale and heavy sea; wind N. W.; distance run 682 knots.

Pumps, lights, log and lookout strictly attended to.

Thursday, 23 day of February, 1893. 205

1 A. M. Steering compass course N. by W. Wind N. W. Strong gale of wind and heavy cross sea. Ship laboring and shipping heavy seas on deck.

4 A. M. Do. wind and weather; found cargo adrift in the holds; distance run 701 knots,

6 A. M. Found deckpipe bolts tore out of deck, whench cocks broken and main rigging screw and rails broke.

8 A. M. Strong gale and heavy cross sea. Got all hands into the hold and secured cargo to the best advantage. Distance run 725 knots.

Noon. Do. wind and strong head sea, shipping much water on deck. Distance run 749 knots.

4 P. M. Do. wind and heavy sea. Distance run 206
772 knots.

8 P. M. Do. wind and sea. Distance run 795 knots.

Midnight. Strong gale and heavy sea. Distance run 824 knots.

Pumps, lights, log and lookout strictly attended to.

Friday, 24 day of February, 1893.

1 A. M. Steering compass course N. N. W.; wind S. W. A. M. Strong gale and heavy sea, shipping much water on deck. Eased engines.

4 A. M. Wind S. W.; do. wind and sea.

7 A. M. Steering compass course N. W.

8 A. M. Strong gale and heavy cross sea. Eased 207
engines; the decks continually swept by the sea; wind veering from S. W. to N. N. W.; ship rolling and straining very much.

Noon. Steering compass course N. W.; wind N. W.; do. wind and sea.

At 1:30 P. M. the sea swept the deck cargo overboard, breaking bulwark rails and doing other damage about the decks, breaking ventilators and washing water casks overboard; deck cargo washed overboard—15 casks bay rum, 24 drums iron.

6 P. M. Weather moderating. Strong sea. Set away full speed.

208 8 P. M. Less wind. Strong sea.
Midnight. Strong breeze and heavy sea.
Pumps, lights, log and lookout strictly attended to.

Saturday, 25 day of February, 1893.

1 A. M. Steering compass course N. N. W. Wind N. by W. Strong wind and sea.
4 A. M. Moderate breeze; sea falling.
6 A. M. Found rails and stanchions on starboard side badly bent and broke.
8 A. M. Light wind and fine weather.
11.30 fell in with the schooner *Caleb S. Ridgeway*, waterlogged and abandoned.
Noon. Do. wind and weather.
209 1 P. M. Steering compass course N. ½ W.; wind N. by W.; sea slight.
4 P. M. Wind N. N. E.; do., do.
8 P. M. Light breeze east and fine.
10 P. M. Steering compass course N.; wind N. N. W.
10.30 P. M. A strong gale N. N. W.
Midnight. Do. weather and heavy seas breaking over the ship continually.

Sunday, 26 day of February, 1893.

1 A. M. Wind N. W. Strong gale and heavy sea. Ship deck constantly swept by the sea.
210 4 A. M. Do. wind and weather.
8 A. M. More moderate and less sea. Set fore try sail and stay sails.
Noon. Fresh breeze and fine weather. Barnegat L. H., north 12 miles.
2 P. M. Got New York pilot on board.
5.30. Passed Bar Light Ship and anchored at Staten Island at 7.30 P. M. Set anchor watch.
Midnight. Fresh breeze and frosty weather. Pumps, anchor, light and watch attended to.

Laying at New York. 211

Monday, 27 day of February, 1893.

A. M. Light wind and frosty.

6.30 A. M. Got pratique, up anchor and steamed up to Liberty Statue and anchored.

1 P. M. Up anchor and steamed up to Havemeyer's sugar house and moored ship alongside the wharf ready to discharge cargo.

P. M. Light breeze and sharp frost. Olson & Van Houten's man keeping night watch.

Tuesday, 28 day of February, 1893.

A. M. Light breeze and sharp frost.

7.30 A. M. Commenced to discharge cargo. 212

2 P. M. Heavy snow.

3 P. M. Rain and sleet—put hatches on. No more cargo discharged this day. Olson, A. B., and one man from shore keeping night watch.

Wednesday, 1 day of March, 1893.

A. M. Strong wind and snow.

7 A. M. Commenced with the discharging. Noon, frosty weather.

5.30 P. M. finished with the discharging for the day.

Olson and one man from the shore keeping night watch.

Thursday, 2 day of March, 1893. 213

A. M. Fresh breeze and frosty.

7 A. M. Started with the discharging. Noon, frosty weather.

Olson, A. B., and one man from the shore keeping night watch.

P. M. Do. weather.

Friday, 3 day of March, 1893.

A. M. Frosty weather.

7 A. M. Commenced with the discharging.

10 A. M. Cargo of sugar all out. Got tugs and shifted ship to wharf.

214 1 P. M. Commenced to discharge molasses and worked up to 6.30 P. M.

Olson and one man from the shore keeping night watch.

11 P. M. Strong wind and snow.

Saturday, 4 day of March, 1893.

A. M. Strong wind and snow.

7 A. M. Commenced with the discharging and finished at 11 A. M. All the cargo out, unmoored, and with the assistance of three tugs shifted ship to Erie Basin drydock.

Q. You left San Juan, your last loading port, on
215 what date? A. The 19th, I think.

Q. The 19th of February. Now, how would you describe the voyage home? A. Well, we had fine weather the first two days and strong seas from the north, head seas, all the time. Then after that we got the wind coming to the northwest and west-northwest, backing into the west-northwest and that way, and strong gales and heavy cross seas, the sea from the northeast and the wind from the west and northwest, causing a very heavy sea.

Q. Was your ship under water a good deal of the time? A. Shipped a great deal of water.

Q. Would you characterize it as an ordinarily or extraordinarily rough voyage, or a voyage to be ex-
216 pected at that time of the year? A. Well, it was rather a rough voyage. We got the ship partially disabled.

Q. What damage did you suffer on the way to the ship? A. Damages?

Q. Yes—suffered on the voyage? A. The rails and the deck pipes were washed up, the steam pipes on the deck and the bolts broke, and I cannot say exactly.

Q. Other damage about the deck—to the ventilators and winch? A. Ventilators and winch pipes and cocks.

Q. Did you have any deck cargo? A. Yes.

Q. What became of that? A. It was washed 217
overboard.

Q. Did you have any water casks on board? A. The water casks were washed overboard.

Q. Were they fastened? A. Yes, with iron clamp lashings.

Q. Were they carried away? A. Yes.

Q. Where were the water casks? A. They were carried amidships.

Q. Alongside the winch? A. Alongside the bridge, along the ship's sides. They had been fast there ever since the ship was issued till this voyage.

Q. And then they were carried away? A. Yes.

Q. By the seas? A. Yes.

Q. How was the deck cargo secured? A. It was 218
secured with lashings and planks.

Q. Was it well secured, in your judgment, when it started? A. Yes, well secured.

Q. How many times did it get loose before it finally got off? A. It got loose the first time at night, and we got it secured the best we could; and the next day it was washed away. It was the ship having such a list that caused the——

Q. Did any of these damages that you have described make any apertures through which water could enter the hold? A. I couldn't say that they done any of the damage to the——it bent the rails.

Q. These steam pipe bolts especially, where were they? A. They were in the No. 3 hold. 219

Q. Did they lead through the deck? A. They led through the deck to where the plank fastens over the pipes.

Q. Did the breaking of those leave any holes? A. Yes.

Q. How many were open? A. I couldn't say. The next morning I found them open after the gale.

Q. Had you water on deck during that night? A. Yes.

Q. Had they any holes forward? A. I never saw any holes forward.

220 Q. Do you know whether there was any water taken in either of the holds on the voyage? A. There was water taken in in hold No. 3.

Q. Was any water taken in No. 2, as far as you know of? A. No, I don't think there was any taken in.

Q. Did you see the cargo when it was discharged? A. Yes.

Q. Was there any appearance of sea water? A. Well, they said there was sea water in No. 3. But in No. 2 there never was; I never heard a word mentioned that there was any sea water in No. 2 hold; and they bailed all of the molasses out. I should think they baled fifty casks, at least, out of
221 this lower hold.

Q. No. 2? A. (continuing.) And in No. 3 they baled out there too.

Q. Did they leave any at all in No. 2? A. There was some left, and sugar likewise in the bilges.

Q. I mean above the floor—on the floor? A. There was a little; there was a little went away from there.

Q. How much was left in No. 3, more or less? A. There was not so much in No. 3.

Q. Do you know whether this molasses was very thick or thin? A. It was thick when we arrived at New York; but when we left it was like water in Porto Rico.

222 Q. What was the temperature in Porto Rico while you were loading? A. About 85.

Q. What was it when you arrived in New York? A. About 25, I suppose.

Q. Below freezing, was it? A. Yes, below the freezing point.

Q. And you were on the passage about eight days? A. Yes.

Q. Did you see the pumps sounded on the voyage? A. Yes.

Q. Soundings taken in what holds? A. In all the holds.

Q. Did you find any water? A. No, I didn't find

any water, but the molasses, after the ship took the list. 223

Q. What did you sound with, with the rod? A. With the rod, of course.

Q. Did the rod indicate molasses all through? A. Yes.

Q. Did it indicate any water? A. Well, we couldn't tell. If the rod goes down amongst molasses, you can't tell whether there is water or no.

Q. Were the pumps tried, to your knowledge? A. The pumps were always tried; tried every watch.

Q. Were the sluices open from the No. 2 and No. 3 hatches? A. The sluices were open in No. 3, but nothing came out of it, because they got stopped— 224 sugar, I suppose.

Q. Sugar and molasses? A. Sugar and molasses.

Q. Did any come out of No. 2? A. No. 1 and No. 2 are all in one; the bilges run right through No. 1 and No. 2.

Q. The sluices which lead from the bilges into the engine-room? A. Yes. There was never anything coming through. Of course; we keep the sluices shut, and we open them occasionally to find water; and the morning after the ship took the list I opened them, but we never got anything in these sluices. We sound to see if there is water, and if there is water we open the sluices and let the water out into the engine room. 225

Q. Where does your pumping taken place? A. In the engine-room.

Q. How is the water brought from different parts of the ship to the engine-room, in order to have it pumped out, if there is any? A. It comes through the bilges along the sides of the ship. There is a gutterway.

Q. Sluice way? A. Yes; there is a gutterway along the side of the tank, and the tank will be three feet high, and alongside there is a gutterway.

Q. Limbers? A. Limbers, we call them; and that is about 2½ feet deep; and the water that comes

226 into the ship drains into those, and then it goes through into the engine-room through the sluiceways.

Q. And that sluiceway is an opening in the bulkhead? A. Yes.

Q. Between the engine-room compartment and the hold? A. Yes.

Q. And there is one of those through each side? A. Yes.

Q. Through the bulkhead forward of the engine-room? A. Yes.

Q. And one each side abaft of the engine-room? A. Yes; also the sluice from the after bulkhead into the after well.

227 Q. How large are the openings of the sluiceways through the engine-room bulkheads? A. About 2½ inches, I suppose.

Q. How are they worked? What kind of a valve is there? A. They work with a cock; a half turn it takes to open and shut them.

By Mr. Black:

Q. From the deck, or below? A. From the deck —from the deck of No. 2, and from the engine-room of No. 3.

By Mr. Kirlin:

228 Q. Were you in the engine-room when they were opened? A. From the engine-room – on the deck? We never open them, because the water always runs aft; but the ones that lead to the engine-room.

Q. But I am speaking of the sluiceways into the engine-room. You say they were opened by you? A. Yes.

Q. Did you go below to see whether any water came out? A. Not the forward deck that come up here, but the ones in the after well that come from below.

Q. I am not talking about those. I am asking about the sluiceways into the engine-room from the

No. 2 hold, especially. Those you say open from the deck? A. Yes. 229

Q. You opened them? A. Yes, I opened them myself.

Q. Did you go below to see what came out? A. No; but I heard there was nothing coming.

Q. Did he know you were opening them at the time? A. I asked if he was pumping anything out, and he said no, there was nothing came.

Q. How many days out was that? A. That was after the ship took the list.

Q. Did you open the sluiceways on both sides? A. I opened them myself.

Q. On both sides? A. Both sides.

Q. Were the after sluiceways opened? A. Yes; the after sluiceways were also opened. The engineer goes in every watch into the after end. 230

Q. That is, into the well? A. Into the well. They always go along the after end of the ship to oil their bearings.

By Mr. Black.

Q. That is along the shaft tunnel, I suppose? A. Yes.

By Mr. Kirlin:

Q. What previous cargoes had you had since you joined the ship, before going to Porto Rico? A. We had soda and potash out from Newcastle here—1,000 tons; that was all. 231

Q. Were the limbers looked at in New York? A. The limbers were all cleaned out in New York.

Q. Are you able to state whether the sluices were clear at the time you went down there? A. Yes, they were.

Q. Did you have any loose cargo going from here to Porto Rico, anything that could get down into the sluices? A. No, nothing.

Q. All case? A. All case.

Q. When you started back from Porto Rico, could

232 you say the sluices were all clear? A. Yes, all clear. We always clean the limbers out before we load cargo.

Q. Do you examine the sluices? A. Yes.

Q. Was this done on this occasion? A. Yes.

Q. By you? A. Yes.

Q. Does this ship make much water ordinarily? A. Does not make any.

Q. Staunch and close? A. Tight—as tight as can be.

By Mr. Black:

Q. Tight as a bottle? A. Yes.

233

By Mr. Kirlin:

Q. Who stowed the cargo in Porto Rico? A. I couldn't say who stowed it, because there was a stevedore and I couldn't say his name.

Q. Did you have anything to do with it? A. I had nothing to do with it.

Q. Did any of your officers have anything to do with it? A. No.

Q. Or your crew? A. No. If I saw them doing anything wrong, I used to tell them sometimes; but I never saw them—I never see them doing anything; but if I wanted them to do anything in my way, I used to tell them.

234 Q. Did you know your steamer was under charter at the time? A. Yes.

Q. You knew that you had no responsibility as to the stowage?

Mr. Black: Objected to as leading.

Q. Did you know?

Mr. Black: Same objection.

Q. Did you know who was responsible for the stowage?

Mr. Black: Same objection.

A. I knew that I was not responsible. But, still, 235
if I saw anything going wrong about the ship, I would like to put it right as far as I could.

Q. That was quite right. Were you below during the time the cargo was being stowed at the different ports of loading? A. I was on deck most of the time.

Q. Did you go below at all? A. Down in the hold?

Q. Yes. A. Not to take any interest in the stowing.

Q. Did you notice the manner in which the hogsheads of sugar were stowed, as you looked down, or as you were down at any time? A. As far as the hogsheads were stowed, the ship was right enough. 236

Q. How were they stowed; fore and aft? A. Fore and aft.

Q. How many tiers deep were they? A. Four, I think. Four in the No. 2.

Q. Did you notice whether they were dunnaged, or not? A. There was plenty of dunnage, as much wood as would load a ship, very near this thing, too.

Q. Did you notice the stowage of the molasses in the 'tween-decks? A. I saw them stow them fore and aft, and well bedded as far as I saw.

Q. Did they appear to be dunnaged? A. Yes; they were all well chocked with wood.

Q. As far as your observation went, what do you 237
say of the stowage—good or bad? A. Well, it was middling as far as my—— If we hadn't had bad weather the cargo would have been right enough, I dare say.

Q. What was the name of the supercargo that was with you, do you know? A. Maloney.

Q. Did you give any receipts for cargo? A. Yes, I used to give receipts when I was tallying.

Q. You sometimes tallied? A. I tallied the cargo in a good part of it—signed. The mate signs boat notes when they are tallying cargo, and the bills of lading were signed from those.

238 Q. Do you know where the 450 hogsheads of sugar were taken which were said to have been damaged? Do you know where the molasses was taken on and stowed? A. The molasses was taken on in Ponce.

Q. At the time you took this molasses on in Ponce was there anything in the lower hold? A. There was part cargo in the lower hold.

Q. Some of the outward cargo was still there? A. Yes.

Q. And the 'tween-decks, I suppose, had been freed, had they? A. Yes,

Q. Was any molasses stowed in the 'tween-decks aft? A. Yes.

239 Q. What one; in No. 3 or No. 4? A. The 'tween-decks were all——

Q. Above the No. 3? A. Above the No. 3. There is none right aft of No. 4. From the foremast to the mainmast the sugar was stowed, with the exception of the engine-room.

Q. You mean the molasses? A. The molasses.

Q. In the 'tween decks? A. Yes.

Q. The 'tween-decks is of steel, is it not? A. Yes, as far as I know.

Q. It is metal? A. Yes.

Q. The main deck also? A. Yes.

Q. And any covering over it? A. No covering.

Q. Is it tight? A. Yes, perfectly tight.

240 Q. Is the 'tween-decks tight? A. Well, they are all tight but where the feeder holes ars.

Q. What do you mean by "feeder holes?" A. Holes in the deck.

Q. How many are there in No. 2? A. Three on each side.

Q. How are they covered? A. Covered with an iron plate.

Q. The same kind of material as the deck? A. Same as the deck.

Q. How are they fastened? A. With four bolts through.

Q. Was the ship in that condition when she

started on her outward voyage from here to Porto Rico? A. Yes. 241

Q. Were the covers on? A. Yes, the covers were on.

Q. Bolted? A. There were two bolts in each one.

Q. Did they remain in the same condition outward, and while there, and returning? A. Yes.

Q. Were they touched at all? A. No.

Q. Did those covers fit closely over the hole? A. Close on the top of the hole.

Q. And bolted fast? A. Yes.

Q. What other openings are there in the 'tween-deck No. 2? A. There is the small hatches.

Q. Have they coamings about them? A. They have coamings about three inches high. 242

Q. Have they covers? A. Yes; there were hatches on them.

Q. Were the hatches on? A. Yes, and caulked.

Q. And then, of course, there is the main No. 2 'tween-deck hatchway? A. Yes.

Q. How high is the coaming there? A. About 15 inches. There was three openings into the hold, in the after part, there was three openings, and, of course, the hatches were on and caulked.

Q. Were there scuppers leading from the 'tween-deck down? A. Yes.

Q. How many? A. Two.

Q. One on each side? A. One on each side.

Q. How large are those scupper pipes? A. Two inches, or two and a half, perhaps; I couldn't say rightly. 243

Q. Where do they lead to? A. Into the bilges, into the lower hold bilges.

Q. So that any molasses that might leak out of the casks would find its way into the bilges? A. Yes; that is what they are there for. It was perfectly clear before we commenced to take in cargo.

Q. You did not find them stopped up when you got here? A. No; we found the molasses in the lower hold.

Q. You did not find any molasses in the 'tween-

244 decks, did you? A. Not very much; very little in the 'tween-decks.

Q. That indicated that the pipes were open, didn't it? A. Yes.

Q. On the voyage, under date of the 22d of February, there is an entry that the ship took a heavy list astarboard; what was the cause of that? A. The wind and the sea.

Q. The wind and sea alone would not give the ship a list, would they? A. No, not without shifting the cargo.

Q. Did the cargo shift? A. Yes; the cargo had shifted, or it would not have the list, I suppose.

Q. The next morning, under date of 23d of Feb-
245 ruary, is an entry that you went below; the following morning at 4 P. M., "All hands went below to secure cargo." Were you one of those that went below? A. I was below for only a short time.

Q. On that morning? A. Yes.

Q. Where did you go? A. I went into No. 2 hatch.

Q. How did you get down? A. We got a tarpaulin lifted up at one corner.

Q. Took off the covers? A. Yes.

Q. How many covers did you take off? A. How many hatches?

Q. Yes. A. We took two hatches off.

Q. Were they covered after you went below? A.
246 Yes, afterwards.

Q. Was the sea running at the time? A. Yes; but not as much as it was the night before.

Q. Did any water get down while you were there? A. No, no water.

Q. What did you find? A. We found the cargo all adrift in the after part.

Q. Of what? A. In the after part of the hatchway.

Q. No. 2 'tween-decks? A. Yes, No. 2 'tween-decks.

Q. Did you find any hogsheads broken? A. Yes.

Q. How many? A. I couldn't say. We didn't 247
interfere with what was right in the after end.

Q. How many were broken? A. I couldn't say how many were broken that morning.

Q. Were there half a dozen? A. Well, I should think there was; but I couldn't tell how many there was broken that morning.

Q. Were any broken? A. Yes, there were some broken, and——

Q. And the others had moved? A. Yes, the others had moved, some lying with the ends up, and some one way, and some another.

Q. Those that were broken, were they caved in on the side? A. Yes, they were caved in and some broken all to pieces, and others with the ends out. 248

Q. And did you find them shifted over to the starboard side, where you had the list? A. Yes.

Q. What precaution did you take to secure the cargo? A. We got planks from the deck.

Q. And restowed it? A. And restowed it the best we could.

Q. Did it roll around any after that? A. Not that day, but it did another day afterwards; it came away again in very bad weather.

Q. The cargo moved again? A. The cargo moved again.

Q. Did you go below again? A. No.

Q. How could you tell it moved again? A. We could hear it; we could hear it from the chart room, 249
and hear the cargo moving in the- —

Q. In the No. 2? A. In No. 2 hold.

Q. Did you go below in any of the after holds? A. Yes; we were down in the No. 4.

Q. Did you find anything adrift there? A. Only some few bags; a few bags had fallen down; that was all.

Q. When you arrived in New York, what condition did you find the cargo in in the 'tween-decks? A. Found it empty.

Q. In the No. 2, 'tween-decks, where you had re-

250 stowed it at sea, what condition did you find that in? A. We found it very much broke up.

Q. Had your temporary restowage hurt the cargo? A. Well, it had helped. If it hadn't, we wouldn't have been so successful——

Q. It had not entirely secured it? A. No.

Q. Did you have plenty of stowing timbers to put down there at sea? A. Yes; we had a great deal of timber aboard the ship. We put down all the available wood that we had to secure it.

Q. You have been to Port Rico again since then? A. Yes.

Q. Was your cargo stowed in the different ports by the same stevedores? A. No; other stevedores
251 this time. But, still, we went to another port, you see. Before we went to St. Johns, and we took stevedores down there. This time we went to a little island in the province that belongs to the same place—a small island, and we took a different way from St. Johns, and we took the stevedores there to stow cargo.

Q. You pick up a stevedore at the first port and take him all around? A. Yes.

Q. And bring him back? A. Yes.

Q. That is the course of the stowage? A. Yes.

Q. You do not have a separate stevedore at each port? A. No. You take the men on board ship, and they discharge the cargo, and go around the
252 island with you and watch the cargo.

Q. Who provided the stevedores in each of these cases? A. The merchants——

Q. The Porto Rico Steamship Company—their agents? A. Yes; they employed the stevedores.

Q. I believe you have testified that they gathered up the molasses here in New York? A. Yes.

Q. Do you know how much was taken out altogether? A. I should think about 50 hogsheads.

Q. Was that put up in new hogsheads? A. There was old hogsheads.

Q. I mean different hogsheads? A. Yes, different hogsheads.

Q. And not those in which it came? A. They 253
didn't put any into the hogsheads we had on board.

Q. Then went ashore with the rest of the cargo? A. Then went ashore with the rest of the cargo. Some went up. I couldn't say how many there was went to the sugar house, and the remainder went down to the wharf where we discharged the molasses.

Q. Are you going away with the *Centurion* tomorrow? A. Yes.

CROSS-EXAMINATION by Mr. Parkin:

Q. You say the vessel was under charter? A. Yes.

Q. And the charterers supplied the stevedore, did 254
they? A. Yes; they had full control.

Q. They had full control? A. Yes. When we tally cargo we get specially paid for it.

By Mr. Kirlin:

Q. Did you here? Were you paid for your tallying? Were you paid by the merchants for tallying? A. Yes.

By Mr. Parkin:

Q. That is all you had to do—with the tallying? A. Yes. That is all I had to do with the cargo.

Q. You say you think the stowing was middling well done? A. Yes. As far as I know, it was, if 255
the molasses hadn't got adrift; and it is a thing—it is like glass all the time it is boiling out of the casks; when you first come to take it in it is fermenting out of the casks, and running down on the deck, and the least heave to get away the ship, and coming into a gale of wind, of course the casks are worked, and perhaps worked around, and one got adrift, and there was the lot adrift.

Q. You think that the cargo might have been stowed better, so that the molasses would not have got adrift? A. No, I don't think it could; I don't think it could be stowed any better; not in the place

256 it was mixed in. The thing is, the molasses got adrift—one of the casks perhaps got adrift, and that loosens it all, and it got down amongst the ship again.

Q. You say the casks were stowed fore and aft? A. Fore and aft.

Q. And how was it dunnaged? A. We had plenty of wood; with plenty chocks of wood.

Q. How was this dunnage placed? Can you describe to me? A. Under the bilges; under the flat part of the casks, and then wedged up with quoins.

Q. What are quoins? Are they wedges? A. Some sort of wedges.

Q. How many tiers of hogsheads were there in
257 the 'tween-decks? A. There were two.

Q. And how is the upper tier placed with regard to the lower tier? A. They are placed in the cunt-line? A. The casks laid this way, and another laid here (witness indicating); bilge and cunt-line we call it.

Q. That is, so that the swell of the casks of one part rests in the hollow of the other? A. Yes.

By Mr. Black:

Q. The four casks come together and make a hollow? A. Yes.

By Mr. Parkin:

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Q. Is anything placed between the different hogsheads to keep them apart? A. Dunnage wood put between.

Q. Dunnage wood put in between each hogshead and the adjoining one? A. Yes.

Q. How is that dunnage wood placed? Does it lay on the deck, or does it stand up like pillars? A. Just stands up between the casks; we just put chocks in between the casks to wedge it.

Q. Is anything placed over the casks, over the top tier, between that and the deck? A. No; they are wedged off the same as the lower tier, with

planks; and where there was any holes, there was 259
wood put up in the top to keep them steady.

Q. Have you ever been on a vessel before where they carried a cargo of molasses? A. No; that is the first one.

Q. You don't know the usual way of stowing molasses? A. No; I have never been in a molasses ship before—that had molasses in.

Q. You say the pumps were tried every watch? A. No; every morning; oh, the pumps are sounded every morning and tried every watch.

Q. Every watch? A. Yes.

Q. And you sound every morning? A. Yes, before breakfast.

Q. When did you first find there was molasses? 260
A. After the ship took the list. There was nothing in the ship before.

Q. How soon after the ship took the list were the sluices first opened? A. I opened them the next morning.

Q. About what time in the morning? A. About 7 o'clock in the morning, daylight in the morning.

Q. And you tried the pumps then? A. Yes.

Q. And you found molasses? A. We found no molasses—not from the No. 2.

Q. You did not then? A. No. We never did get any molasses from No. 2 in the soundings.

Q. But I mean from the pumps. When did you first get molasses from the pumps? A. We never 261
got from the No. 2 hold. We got it from the after end—we got some molasses out from the after end—from the after well.

Q. Didn't the pumps bring up the molasses? A. From the after well. You see they are different connections.

Q. But not from No. 2? A. Not from No. 2.

Q. You sounded No. 2? A. Yes.

Q. And you found molasses was there? A. Yes.

By Mr. Kirlin:

Q. How deep did you find it by sounding? A. They run about two feet of molasses on the rod.

262 By Mr. Parkin:

Q. Did you find molasses every morning after that when you sounded? A. Yes, every morning. The ship never was right upright after that; she always lay over on the side.

Q. When you first found molasses she then had a list? A. Yes, she had a list. There was nothing in the ship before she took the list.

Q. Where is the sounding taken? Where did you put the sounding rod down? A. We have the proper place alongside of the pumps, alongside of the hand pumps.

Q. Running into the bilges? A. Yes, running into the bilges.

263 Q. Did the amount of molasses which was shown on the rod increase after the first? A. Well, not very much.

Q. And when you got here to New York, how deep was the molasses over the bottom of the lower hold? A. Oh, it would be on the lee; right in the lee side it would be a foot or more. It would show on the casks, but they baled it as soon as they got room for starting to bale the molasses.

Q. But it showed on the casks? A. Yes.

Q. That is, on the casks of sugar—you say these places where you put the sounding rod down are at the sides of the ship? A. Yes. (Witness is shown Claimants' Exhibit 4.) The soundings come down

264 just forward of the engine-room bulkhead into No. 2 hold, and also just abaft of the engine-room bulkhead into the hold No. 3. Here (witness putting his finger on the space just forward of the screw) the sounding is taken by the engineers.

By Mr. Black:

Q. That is the well? A. Yes, that is the well. They work those sluices as well from the tunnel.

By Mr. Parkin: 265

Q. When you put the sounding rod down, where would it strike the bottom of the vessel? A. It would strike on the side.

Q. On the side of the vessel? A. On the side of the vessel.

Q. How far above the bottom of the vessel would it be? A. It would be about three or four inches—four or five inches—from the bottom of the vessel.

By Mr. Kirlin:

Q. You mean above the top of the tank, or above the bottom of the bilge? A. No, between the frames. The tank is placed between the bottom of the vessel and the floor of the lower hold. 266

By Mr. Parkin:

Q. The sounding rod would not strike on the bottom of the tank? A. No, not on the tank. It is supposed to come into the bilges. If the sounding was in the middle, of course, it would take a longer line.

Q. If the sounding was taken in the middle, and went down to the bottom of the vessel, it would take about five inches longer than if taken where it really is? A. Yes. Then there is nothing can get into the middle of the ship, because the tanks are there.

Q. I understand that. How deep is that tank amidships? A. I never measured it. 267

Q. Do you know at all? A. I should think it would be—I couldn't say.

By Mr. Kirlin:

Q. About two feet and a half? A. About two feet and a half.

By Mr. Parkin:

Q. Was it as deep as that—two feet and a half? A. Yes, it would be two feet and a half.

268 Q. Can you explain to me how it was that the molasses got adrift? A. I could not.

Q. When you went down into the hold after the cargo got adrift, were all the casks in the hold No. 2 loose? A. Not all of them, but the principal part of them was.

Q. The principal part of them? A. In this after part.

Q. In the after part of hold No. 2? A. Yes. Of course, *those* ones were fast *here* (witness indicating the forward part).

Q. The forward ones were still fast? A. The forward ones were still fast.

Q. And the after ones were not? A. The after
269 ones were not.

Q. They had all got loose? A. They were getting loose.

Q. You say some had got turned around in a line across the ship? A. Some were broke right up, the very hoops were off, and just the staves.

By Mr. Black:

Q. Heads off? A. Heads off.

By Mr. Parkin:

Q. Some were lying across the ship? A. Some were across in one confused mass. That hold was very difficult to stow, because there were so many
270 stanchions, and perhaps the casks at the stanchions worked, and worked till it got——

By Mr. Black:

Q. Twisted around? A. One might have got twisted around, and then the remainder did.

By Mr. Parkin:

Q. The log shows, does it not, that the ship was thrown on her beam ends? A. Yes.

Q. Was it a sudden squall that struck her? A. Yes; quite a heavy squall.

Q. Had she sails up at the time? A. No, she was 271
just getting sails in when the squall struck her.

Q. In what direction did that squall come, with reference to the ship? A. On the beam.

Q. Directly on the beam? A. Yes.

Q. On the port beam? A. On the port beam.

Q. Was there a heavy sea running from the same direction all the time? A. The sea was also ahead, and abeam, and from the lee bow as well.

Q. And this threw her over on her beam ends? A. Yes, to starboard—not exactly on her beam ends, but with a heavy list.

Q. Did she right at all of her own accord after she was thrown over? A. She righted a bit, but, of course, she still had about three feet list, as near as 272
I could judge.

Q. But she had at first fallen over to a greater distance, had she? A. Yes.

Q. And then partly righted again? A. Yes.

Q. How soon after this did you go down into the hold? A. Not till the next morning. It was impossible to get down. The weather moderated for a little bit next morning, and then we could get down.

Q. When she went over did you hear the casks of molasses——? A. I didn't hear them then, but I heard them moving afterwards.

Q. Were you on deck when she went over? Was it your watch? A. No, I was not on deck; it was 273
my watch below.

Q. It was your watch below? A. Yes.

Q. Were you below while the cargo was being stowed? All the time, I mean? A. I was tallying the cargo in.

Q. Where were you? A. On deck.

Q. Not below? A. No.

Q. You did not pay any special attention then to the——? A. No; as far as that goes, I had nothing to say in the matter of stowing the cargo.

Q. Do you know whether the pumps got choked

274 at all before you got in? A. Our pumps were not choked.

Q. You say they stopped bringing up molasses after two or three days? A. Well, after a time they used to let it run out into the after well a little, but there was none come out of No. 2 hold.

Q None came out of that? A. No, none came out of the No. 2 hold. The bilges were full of sugar --when we got here the bilges were full of sugar—and as hard as rock.

Q. With sugar and molasses? A. Sugar and molasses—the ship rolling about.

By Mr. Kirlin:

275 Q. Was the sugar solidified up to the sluices? A. Yes; right along in the lee of the starboard side. The sugar was quite hard in the——

Q. In the limbers? A. In the limbers.

Q. Up as high as the sluiceway? A. Higher than the sluices.

Q. That accounts for the fact that the molasses did not come out? A. That was what blocked it up, the sugar getting in. We had to dig it out with shovels.

By Mr. Black:

Q. Did you find any damaged cargo or broken casks in any but this between-decks in the No. 3?
276 A. Of course there was: out in the lower hold.

Q. That was No. 2 also? A. Yes.

Q. Were there any in the other holds? A. In No. 3 I didn't see any.

Q. Nothing broken? A. There was some broken casks, but very few.

Q. There had been no cargo shifted in that hold? A. There was a cask or two that got worked around, of the molasses; it got worked around, and turned with the bung down.

Q. You mean it had not turned from its position end for end, but it had rolled around, so that instead

of being on top it had worked around so as to get below? A. Yes. 277

Q. That is what you describe as working around?

By Mr. Kirlin:

Q. And run out? A. Yes. There were two holes in each cask.

By Mr. Black:

Q. Molasses is always stowed on board ship with the bungs up, and the bungs out and the hole up? A. Yes. These had two holes in them—two spiles in them.

Q. That serves the purpose of preventing the fermentation or allowing the escape of the fermentation, doesn't it? A. Yes. 278

Q. And were those on the top side of the cask where the bung hole came? A. Yes.

Q. On the same staves? A. Same stave as the bung hole.

Q. All of these 250 casks which were shipped at Ponce were put into the No. 2 hold? A. No. 2 and No. 3 'tween-decks.

Q. Do you know how many were in No. 2? A. No; I can't say how many.

Q. Was there any difference in the stowage of the casks in the No. 2 from that of the casks which were put in No. 3? A. No, I don't think so.

Q. Same methods pursued? A. Same methods. 279

Q. And those in No. 3 were entirely in good condition, except in the heaving over of the casks? A. There might have been one or two; I couldn't say.

Q. Do you know that there were? A. No, I don't know.

Q. Did you find molasses on the deck of No. 2 in the between-decks? A. Yes; well, very little; most of it had got down below.

Q. Was it more on one side than on the other, or was it distributed equally all over? A. No; it was all

280 over the 'tween-decks in No. 2; but very little in when we came into port—there was very little in the 'tween-decks—it was all down in the lower hold.

Q. Was it dripping through when you came into port? A. It had gone down the scuppers, perhaps; I couldn't say.

Q. Did you see any signs of its getting through the deck itself? A. No.

Q. No signs along the under side of the between-decks of any place where it had come through? A. I saw some on the bulkhead, a little drip, but it might have come from the deck.

Q. That is the bulkhead. I am speaking of the
281 under side of the between-decks. Did you see any place in the No. 2 along the under side of the between decks showing that the molasses had come through there? A. No.

Q. What is your opinion as to the way in which the molasses got from the between-decks of No. 2 into the hold of No. 2? A. It got down the scuppers, I suppose.

Q. You have told us about the bilges. Are there two bilges on that steamer? A. Yes; two; one on each side.

Q. And those bilges are on each side of what? A. Of the tank.

Q. Of the water ballast tank? A. Yes.

282 Q. That stands over the keelson. Do you know whether your ship has a keelson? A. It has no keelson.

Q. It stands over the line of the keel, and extends on each side of that line towards the wings of the ship? A. Yes.

Q. It does not go entirely across? A. No.

Q. How much space is there between the outer edge of the tank on each side and the ship's lining? A. On the top there would be about two feet. And, of course, as the wings run shorter, it is less.

Q. That is at the top. At the bottom it is down to a triangle, or curve? A. Yes.

Q. That is, the curve of the bottom at the wing? 283
A. Yes.

Q. And that is what you call the bilge? A. Yes.

Q. And that space extends the entire length of the ship? A. Yes.

Q. What forms the floor of the No. 2 hold? A. Pine.

Q. Pine? A. Pine planks.

Q. Does that run entirely across? A. Right across.

Q. What does it rest on? A. It rests on two and a half——

Q. Stringers? A. Stringers on the top of the tank—about *that* far apart (witness indicating).

284

By Mr. Kirlin:

Q. Two feet apart? A. Two feet apart, I suppose.

By Mr. Black:

Q. Is that a caulked floor? A. No.

Q. So that anything which came out of the lower hold into the cargo would go through that floor into the bilges on the top of the tank? A. Yes.

Q. Where is the limber streak that you speak of, or the limbers? A. The limbers are boards that we have to lift up, for cleaning; we lift the limber boards; we call those limbers—the bilges of the 285
ship; that is, boards on top, that we would lift to get into those bilges to get them cleaned up all the time.

Q. Are those boards a continuation or part of this pine deck? A. Yes.

Q. Are those pieces running fore and aft along each side over the bilge, or are they openings only? I mean to say are they continuous plank? A. They are continuous right along.

Q. Continuous strings that you could take up? A. Yes; we take them up when we clean the bilges out.

286 Q. Does that bilge run from one end of the ship to the other without intermission, or does the bulkhead separate it? A. Yes. That is the sluice.

Q. That is where the sluices come? A. Yes.

Q. Over in the line of the sluices is the sounding well? A. Yes.

Q. On each side? A. Yes.

Q. To get any leakage or drainage which is in hold No. 2 out of the bilges of the hold you have to open those sluices? A. Yes.

Q. There is no pipe leading direct from the engine room into that bilge? A. No; not into that hold.

Q. And to get anything from hold No. 1 it has to go through the bilges of hold No. 2? A. Yes.

287 Q. And to do that you have to open the sluices? A. No.

Q. How? A. It is only a wooden bulkhead between those two holds, and not tight.

Q. So that the bilge is one—— A. The bilge is one continuous one from the bow——

Q. To the forward bulkhead of the engine-room? A. Yes.

Q. Then anything which would run through from the sluices of No. 2 would pass into the bilge of the engine-room, would it? A. Yes.

Q. And then into the well, or pumping box, of the engine-room? A. Yes.

Q. Was the same quantity of molasses in each
288 bilge, or did you only sound in one when you sounded in No. 2? A. We only sounded one—one on each side. There was no escape on the other side.

Q. The port side was pretty free? A. The one that had the list——

Q. And was up—— A. There was nothing in the other.

Q. The port side would be up, so that the starboard side would be down, and that it would run into naturally? A. Yes.

Q. And that bilge, how deep did you find that? A. We found two feet in it.

Q. Was that the most you ever found there? A. 289
We found more afterwards.

Q. How much did you find there? A. I could not say how much there was afterwards, because I didn't take much notice of it after.

Q. How high is the deck of this lower hold above the skin of the ship? A. The decks of the hold?

Q. What I want to get at is the depth of the bilges, if you please to call it so, at the side of the water tank, or the ballast tank? A. That is about two feet I should think.

Q. Anything that ran down the scuppers from the between-decks of No. 2 hold would pass between the skin of the ship and the ceiling of the ship; or don't you have a ceiling in that ship? A. Just battens. 290

Q. You have cargo battens? A. Yes; and the pipe just comes down alongside of one of the angle-irons.

Q. Making the frame? A. One of the frames.

Q. That pipe leads from the waterway, if you please to call it so, at No. 2? A. Yes.

Q. Down along the frame right into the bilge? A. Yes.

Q. And discharges there? A. Yes.

Q. You told us there was no molasses pumped out of the No. 2 hold? A. No, there was none.

Q. How do you know that fact? A. I know there was none came through.

Q. You were watching for that, were you? A. 291
Yes, I watched if they could get any—unless I inquired if they were getting water or anything out of the No. 2 hold.

Q. And you went down yourself, or simply learned that from the engineers? A. From the engineers; that there was nothing came out of No. 2.

Q. You know there was molasses got into the well tank-way aft near the screw? A. Yes.

Q. How did you know that? A. Because I saw it coming over the sides.

Q. You saw that personally? A. I saw that.

Q. From which hold did that molasses come? A.

292 That was from No. 4—No. 3 and No. 4—No. 3 and No. 4 were all in one.

Q. How many of these casks of molasses in No. 3 and No. 4 were empty, or partly empty? A. That I don't know. I didn't take notice of that.

Q. Now, coming back to the time of the vessel's rolling on to her beam ends, had she been rolling heavily, or not, before that? A. Well, no; not very heavy before that.

Q. Rolling some? A. Rolling some.

Q. And which side went down when she went over on her beam ends? A. The starboard side.

Q. Now, tell me how much of a list you mean to describe by "going on her beam ends?" A. I said
293 three feet. There would be more than that, you see; but I mean regular list.

Q. I am not talking of the list; you are getting things mixed up. You made the entries in this log book, didn't you? A. Yes.

Q. Do you know what the meaning of the words "beam ends" is? A. Yes.

Q. Now, when you put down, as you did, at 6.30 P. M. on the 22d, "a heavy sea struck the ship, heaving her on her beam ends," what did you mean to describe by that? A. I meant to describe that——

Q. Did you mean that the vessel actually rolled over, so that her deck was at a big angle from the horizontal? A. It was a big angle.

294 Q. How much of an angle should you judge? A. I reckon about 45. We very often say "on her beam ends" when it is not——

Q. Not actually or literally on her beam ends—because you might never come up if she got that way; but you meant to say she made a very heavy roll? A. Very heavy; yes.

Q. And she came right back again? A. Well, part of the way; she was rolling, of course; many times she would be perhaps a list the other way.

Q. And she would go back. But what I want to get in your mind is this: After she got over on her beam ends, did she come again upright, and

so go over to the other way, and so roll a little be- 295
fore she got perpendicular again? A. She would also roll a little to windward when there was a heavy sea on; but that side is always the lee side.

Q. Of course. The lee side is the one that is down, as a rule? A. Yes.

Q. This heavy roll she took—did she get back to her equilibrium in making these rollings after that, or did she keep on rolling a little bit before she stopped? A. Of course, she rolled all night after that.

Q. I don't think you have got the thing in your mind that I want to inquire about. If a vessel gets a tremendous list, as this must have been, she does not get right back to the equilibrium until some 296
agitation—some moving. Was there any succession of rolls which was due to that extreme one? A. Oh, yes; of course she rolled very heavily all the time.

Q. You speak of this as a "heavy sea." Did that sea come aboard? A. Yes.

Q. You say in your log that the sea washed the deck cargo adrift? A. Yes.

Q. Does that mean the cargo on both sides, or only on one side? A. Only on one side.

Q. On the side that the sea struck you? A. On the port side—that the sea struck the ship.

Q. And then you say that you got all hands up and secured that deck cargo? A. Yes. 297

Q. Was that done securely at that time? A. Well, to the best advantage.

Q. How soon after this list did you hear or know of anything which told you that this cargo was adrift in the No. 2 hold? A. I didn't know it until I was on deck about 9 o'clock; nine or ten o'clock; I heard the cargo shifting in the hold.

Q. That night? A. Yes.

Q. And it was the next morning that you went down into this hold? A. It was the next morning. It moderated some the next morning.

298 Q. I understand you to say that there were two tiers of these hogsheads of molasses? A. Yes.

Q. In that between-decks? A. Yes, in the 'tween-decks.

Q. And that those hogsheads were stored fore and aft? A. Fore and aft.

Q. Did they go on top of the hatches of the between-deck? A. No; not on top; they were on top of the small hatchways—small hatches.

Q. How about the main hatch? Were they on top of that? A. No.

Q. You have described the coamings of that hatch as being about 15 inches high, I think. A. Yes.

Q. And the hatch covers on top of that hatch
299 opening as being caulked? A. Not on top of that hatch.

Q. That hatch was not caulked? A. No. The lower ones was all caulked.

Q. Were there any marks or signs, when that cargo was discharged here, that any molasses had got down into the lower hold over the coamings of that hatch? A. Well, I didn't see any.

Q. Were the casks in that between-decks when you first went down adrift in both those tiers, or only the top tier? A. In both tiers.

Q. And the portion which was adrift was that next the engine-room bulkhead, I understand? A. Next the engine-room bulkhead.

300 Q. And when you first got down there, you found some of those casks broken up, didn't you? A. Yes.

Q. Heads out? A. Heads out.

Q. Contents all out? A. Casks all to pieces.

Q. Do you or do you not know when that breaking up of those casks occurred? A. I do not.

Q. Did you notice at any time whether these were new or old casks which contained this molasses? A. Well, I couldn't say. Part I think was new.

Q. And some were not? A. I couldn't say.

Q. You are not sure whether all were new or not? A. No; I am not sure whether all were new or not.

Q. You are not able to say whether some of them

were not old casks? A. There might have been some of them, but I couldn't say, and there might have been all; I wouldn't be sure. 301

By Mr. Parkin:

Q. You don't know anything about it, as to that? A. No, not as to the quality of the casks.

By Mr. Black:

Q. How many casks did you find broken in this No. 2 between-decks when you got to New York? A. That I didn't count.

Q. You have got some idea of whether there was a hundred, or two hundred, or four hundred, or less than that? A. I didn't take notice of the cargo when it came to New York; only I took notice of it when they were baling the stuff out of the holds. 302

Q. You can tell me whether you think there were twenty, or thirty, or fifty, or a hundred of the casks that were broken up? A. I should judge about fifteen; there might be more or less.

Q. Were any of the casks in the lower hold of that No. 2 hold broken up? A. The sugar casks, you mean?

Q. Yes? A. Well, I think there was.

Q. They were not adrift, were they, in any way? A. No, they were not adrift. No.

Q. How many tiers of that kind of casks were there? A. There were four in that hold. 303

Q. Did this steamer maintain the same list all the way from the time it happened till she got to New York? A. Yes.

Q. And you think there was a list of about three feet, do you? A. Yes.

Q. About what angle do you think there was on deck from the horizontal? A. About fifteen.

Q. Fifteen degrees? A. Yes.

Q. And besides having this list, did she roll at all? A. Yes, she rolled very much.

Q. And when she did roll to starboard, did she roll

304 more down on that side than she would have if she had not got the list? A. A great deal more.

Q. You had some pretty rough weather after this big sea that hove you on your beam ends, hadn't you? A. Yes, we had it worse after that.

Q. But you never got such a big heave over as that was? A. We were more used to it.

Q. Do you mean to say you did have a repetition of those big heaves? A. Oh, yes.

Q. Many of them? A. We had some very heavy seas after that.

Q. Did the vessel heave over as much as it did on that first occasion when you described her as being on her beam ends? A. Yes; she hove over as much
305 at other times. For one day we had it very severe afterwards.

Q. Do you know of her being brought under half speed or slow at any time? A. Yes.

Q. Which was it? A. She was put down to half speed and slow.

Q. How long a time was she kept at slow? A. On account of the heavy sea. I could not say rightly how long a time.

Q. By looking at your log could you tell? A. Yes.

Q. You have got it down here—"8 A. M., eased "the engines and at 8 P. M. started out, set away full "speed." Was she running half speed during the in-
306 terval? A. She was running away before the wind. We tried to run the ship then before the wind to get clear of the sea, and then we had to bring her to again.

Q. During this twelve hours, from 8 A. M. to 8 P. M., what speed was she running under? A. She would be going about five knots at that time.

Q. Was that slow or half speed? A. It is half speed.

Q. And during that period was she rolling? A. Yes, rolling heavy. Of course we done it for the best, to try to get out of the bad weather.

Q. And during that time you had your deck cargo 307
washed overboard? A. Yes.

Q. What caused the deck cargo to be washed over? A. The ship having such a list caused that to go; the ship taking the list and the heavy sea coming from the northeast—the heavy sea coming from the northeast.

Q. It was the sea coming aboard that broke it away? A. Yes.

Q. Were any water casks washed over? A. Yes.

Q. How were they secured? A. Secured with iron bands lashed to bolts in the deck.

Q. Had you ever had them washed over before? A. No.

Q. Had you considered them perfectly safe? A. 308
They had stood there since they were in the ship.

Q. And did you consider them perfectly safe? A. Yes, perfectly.

Q. What kind of weather did you have to wash over those water casks, secured as they were? A. Very bad weather. The sea was running so many different ways. It was not a true sea—what we call a true sea, just coming into the Gulf Stream; that ship rolled sometimes you would think you were shot out of a gun.

Q. You speak of that sea as breaking the ventilators on February 24th. What ventilators were broken? A. The engineer's ventilators into the engineers' berths.

309

Q. What kind of ventilators were those? A. For admitting air down.

Q. What are they constructed of? A. Sheet iron.

Q. Were they the ventilators you usually have on ships for ocean voyages? A. Yes.

Q. Strong and sufficient? A. Yes.

Q. Was that an ordinary occurrence to have them carried away by the sea? A. Oh, yes; quite common.

Q. Quite common? A. Yes. There has been none carried away before in that ship.

Q. You never had it happen to you before? A.

310 No, but I often read about them being carried away.

Q. Now, you have got an entry here about some of your stanchions being twisted. What stanchions were those? A. That was by the deck cargo.

Q. When the deck cargo got adrift did it strike the stanchions? A. Yes.

By Mr. Kirlin:

Q. Those are rail stanchions? A. Yes, those are rail stanchions.

By Mr. Black:

311 Q. How large were these holes which were used for the feeders in the between-decks—covered with some covering you spoke of? A. About nine inches.

Q. Nine inches in diameter. Were they round or square? A. Round holes.

Q. And they had a plate that was fitted on, and fastened on with bolts? A. Yes; round covers.

Q. Was that liquid tight, so that the molasses could not go through that when it was bolted on? A. I could not say.

Q. That is what the purpose of it was, isn't it—to make it tight? A. Yes.

Q. When you saw anything wrong, you say you would make suggestions, or call attention to it? A.
312 If I saw them not putting dunnage enough, if I thought the dunnage was not enough, I would tell them about it.

Q. Do you mean to say that on this voyage there was any insufficiency in the dunnage of that cargo? A. Oh, no.

Q. Was it sufficiently dunnaged? A. As far as I know.

Q. You have stowed the same kind of casks and barrels and things of that kind? A. Yes.

Q. You know how they ought to be stowed, even if they contained molasses? A. Oh, yes.

Q. And from what you saw of the dunnage, by

wedges or quoins, or whatever you call them, 313
and the beds, were they sufficient according to your experience of stowing casks? A. Yes.

REDIRECT:

Q. How much molasses did you have altogether? Any more than those 250 casks? A. That was all.

Q. That was the total molasses you had in the ship. A. Total molasses.

Q. And it was all stowed in the 'tween-decks, Nos. 2 and 3? A. All stowed in the 'tween-decks, Nos. 2 and 3.

Q. Most of it was stowed in No. 2, as I understand? A. About two-thirds, as near as I can tell.

Q. And yet you had as much molasses in No. 3 314
down at the bottom as you had in No. 2, you said? A. Oh, no.

Q. More in No. 2? A. More in No. 2.

Q. Didn't you say that they gathered up about thirty casks in one and twenty in the other? A. No; I never said that.

Q. How many do you say they gathered? A. I could not say how many they did gather. I should think about fifty.

Q. How many of those came out of No. 2? A. I don't know. I didn't see the casks go ashore, but I know they put them ashore.

Q. What was the size of these hogsheads of molasses? A. A puncheon they call it. 315

Q. As big as a hogshead of sugar? A. No, not so big as a hogshead of sugar. About seventy-five English gallons I should think.

Q. And they were stowed two deep, you say? A. Yes—yes, in No. 2.

Q. And in No. 3? A. In No. 3 I think they were one deep.

RECROSS by Mr. Parkin:

Q. Did you have anything to do with the discharge of the vessel at all? A. No.

316 Q. You didn't pay any attention to that at all? A. No; only what I saw.

Q. Just as you happened to be around there? A. Just as I happened to be around there.

Q. When they were loading the vessel did you at any time call their attention to the way they were loading it? A. No.

Q. Did you tell them to put more dunnage? A. No.

Q. In any instance? A. No.

Q. Nothing of that kind happened? A. No.

Q. Sure? A. No.

By Mr. Black:

317 Q. You are not sure, or it did not happen—which is it? A. No; I never interfered with them with the stowage. The purser was there superintending the——

By Mr. Parkin:

Q. When you said you called their attention to it what did you mean? A. Well, if any other part of the cargo was being dunnaged—perhaps the bags also—to put dunnage on the bags.

Q. You did call their attention once or twice to things of that kind? A. Yes, to different things.

Q. You did, but not to the molasses that you know of. You do not recall as to the molasses whether you did or did not? A. No.

318 Q. Did you or did you not say that when this lurch came which threw her on her beam ends it was during your watch below? A. Yes.

By Mr. Black:

Q. Do you mean to say that you recollect that you called their attention at any time to insufficient dunnage in the stowage of this molasses? A. No.

By Mr. Parkin:

Q. But you did as to some of the bags of sugar? A. Yes; but I was always particular to tell them to get the iron decks ready for those bags.

By Mr. Black: 319

Q. Were these bags in the No. 2 hold? A. They were in No. 1.

WILLIAM JOHN MURRAY, called on behalf of claimants, being duly sworn, testifies as follows:

DIRECT-EXAMINATION by Mr. Kirlin:

Q. You are chief engineer of the *Centurion?* A. Yes.

Q. And you were engineer on the voyage in February from Porto Rico ports to New York? A. Yes. I have been in her since two years last December.

Q. How would you characterize that voyage, 320
smooth or rough or very rough? A. Roughish.

Q. Wasn't it worse than roughish? A. I have had such rough weather; I should say it was roughish weather—not what I would call very rough weather.

Q. Did the ship take a list on the voyage? A. Yes.

Q. How much of a list? A. I should think she would have about four plates—three or four plates—as near as I can tell.

Q. How many feet? A. About six feet.

Q. Do you think as much as that? A. Not far from that.

Q. How much list did she bring to New York? A. 321
When she arrived at New York?

Q. Yes. A. She wouldn't have over 3½, I should think.

Q. You had charge of the engines on the voyage, had you? A. Yes.

Q. I understand that the pumps do not run into the different holds, but that the water comes back through the bilges and is allowed to come into the engine-room by the sluices in the bulkheads. Is that right? A. Yes.

Q. Now, were those sluices open on the voyage? A. The mate told me he had opened them.

322 Q. Weren't you below when they were open? A. Yes.

Q. Did you see him open them? A. I didn't see him open them.

Q. You didn't see him open them? A. I didn't see *him* open them.

Q. Did you see them open? A. Yes.

Q. You couldn't tell who opened them? A. I couldn't tell who opened them.

Q. They were opened from the top? A. Yes.

Q. Were they open the first two days after you left? A. I think it was the first two days.

Q. Did anything come out? A. The water was a little discolored.

323 Q. I am now speaking of the sluices from No. 2? A. From No. 2. There is no sluices from No. 1 and No. 3 in the engine-room.

Q. They go into the after well? A. Yes.

Q. On the third day were the sluices open, and, if so, what came through? A. I don't think there was anything came through.

Q. Nothing came through? What do you understand was the cause of that? A. The cause of not coming through?

Q. Yes? A. I should say that the molasses and sugar had got mixed together.

Q. And solidified? A. The sugar was thicker than the molasses. It was too stiff, and wouldn't
324 run. Because the sluices is only about two inches or two and a half.

Q. Do you remember what day it was that you saw them open and nothing came through? A. As near as I can recollect, I think it was on the Monday when they were open, because we sailed on a Sunday. I think it was Monday.

Q. The steamer took the list on Wednesday? A. On Wednesday?

Q. Yes. Was it the day before that, or that day, that the sluices were open and nothing came? A. I couldn't say for the day. I put it down in my log and other things.

Q. Where is your log? A. My log is at home. 325

Q. Sent to England? A. Yes.

Q. You remember the fact that it was after you left? A. It was after we left.

Q. A couple of days? A. It was after we left Porto Rico.

Q. Do you remember the mate telling you he was going to open them, and he wanted you to discover if anything came? A. Yes.

Q. What did you report to him? A. I never reported to him.

Q. Didn't you tell him there was nothing came? A. Yes—after.

By Mr. Black: 326

Q. A few days afterwards? A. Yes; when he was inquiring.

By Mr. Kirlin:

Q. After that, was that sluice opened? A. Yes.

Q. Did anything come? A. Not out of the fore one.

Q. How many times did you see that opened and tested on the way up? A. I don't think they were opened any more after that.

Q. No more after that? Did you yourself open the sluices leading into the after well at different times? A. I opened them every day and tried them. 327

Q. What did you find? A. Very little came out of the starboard side—more water—discolored.

Q. Did you find molasses? A. Very little molasses. The molasses was all between decks.

Q. Did you find any molasses on the port side? A. No. It was all on the starboard side that came out—what did come. They were opened by hand.

Q. How large are those sluices? A. Same size as the others—two inches. They have a cock.

Q. When you opened these sluices did the molasses and water, or whatever it was, come out thick? A. No.

328 Q. It was thin? A. Yes—more like water, you would say, that had been standing for three or four days—coal dust—very dirty; but it had the smell of molasses; but not thick; and the sugar that there was drained came from the molasses and sugar when it was put in, you know.

Q. If you found much molasses coming out of the sluices, you would shut them off, wouldn't you? A. Yes.

Q. You know they gather up the molasses? A. Yes, they gather it up.

Q. Did the ship make any water on the voyage, as far as you know? A. Not that I know; no more trouble in the engine-room with water than we had
329 on any other voyage.

Q. Does she make much water ever? A. When we have very bad weather.

Q. How long have you been on the *Centurion?* A. Two years gone December.

Q. When you tried the sluices did you leave them open as long as anything would come? A. As long as anything would come.

Q. And you did that every watch all the way up? A. Yes; and they generally used to stay open for a time—I stayed there about half an hour.

By Mr. Black:

Q. That was aft—in the well? A. Yes; and
330 then shifted them; because there was a little water from the tube. The wells are not very large. If you left them open it might accumulate and come back.

By Mr. Kirlin:

Q. You let all run out that would come out? A. Yes; every four hours. The engineer goes down every four hours.

Q. Are you going away with the ship now? A. Yes.

CROSS-EXAMINATION by Mr. Parkin: 331

Q. When did you say the sluices from No. 2 were first opened? A. I think it was the second or third day.

Q. Before or after the vessel took the list? A. Before the vessel took the list.

Q. Before the vessel took the list? A. Yes.

Q. How often were they opened after that? A. I think they were opened all the time, as far as I know, till we found molasses came out, and then they were shut.

By Mr. Kirlin:

Q. You mean by "all the time" every watch? A. 332
Yes.

By Mr. Parkin:

Q. Those were No. 2? A. No.

Q. I am asking about No. 2? A. They were shut as soon as anything came out.

Q. When were they first opened? A. I think the second or third day.

Q. You say that was before the vessel took the list, or afterwards? A. Before the vessel took the list. I think she didn't take the list till the third or fourth day out, as near as I can bring it back. I think the first two days it was fine weather. The two finest days we had was the first two days, as 333
near as I can bring back.

Q. You have been in worse weather than you had? A. Yes, I have had worse weather than that coming across.

Q. In the *Centurion?* A. In the *Centurion*, twelve months ago in October.

By Mr. Black:

Q. Where were you at the time the first of these great big lists occurred that you speak of as six feet? Where were you personally? A. Me? I was down in the engine-room, I expect, about that time.

334 Q. Anything happen to you when it came? A. No; just a heavy lurching over, you know.

Q. And then did it keep that up any time after that? A. The list came on all the time.

Q. The list did not come right after the lurch—immediately? A. No.

Q. How soon after the lurch did the list come? A. I think it got gradually worse for twenty-four hours; because it settled over and the molasses didn't block it that side, and then we used the coals all from that side as much as we could to bring it up.

Q. From the opposite side? A. From the same side the list was on.

335 Q. Of course, that would be so? A. To fetch her up.

Q. And did you continue to do that all the voyage across till you got in? A. I came near doing it to a certain degree; I used four fires instead of five. Three is the average from each side—six fires, and I used four—two from the port side.

Q. Tell me how this sluiceway is arranged in this No. 2? There is an iron bulkhead, isn't there, running from the deck right down to the keel of the vessel, which forms the forward end of your engine-room? A. In the stoke hole.

Q. And the stoke hole? A. Yes.

Q. And the sluiceway is in the lower part of that
336 bulkhead? A. Yes.

Q. And it consists of what? A tube or cock of some kind? A. A cock.

Q. With an opening? A Opening on the bottom and one at the end.

Q. An opening on the bottom? A. And end. It is like a "T" cock. It is a hollow cock.

Q. When that cock is open there is a free passage from the engine-room right into No. 2? A. Yes.

Q. And the flow from the water, or whatever is in the No. 2, goes right in a straight line through this cock when it is open into your compartment in the engine-room? A. Yes; it goes through from the frames in the engine-room.

Q. And runs along in that way? A. Yes. That 337
includes No. 1 and No. 2 hold. That sluice is for both.

Q. Did you ever run a rod through it when it was open to find whether there was any obstruction in it? A. We often do it.

Q. Did you do it? A. Yes.

Q. Did you find it stopped off at any time? A. Yes, I did.

Q. You found it stopped off? A. Yes. I knew what it was, too, because when it came up it was like stiff sugar.

By Mr. Kirlin:

Q. Did you do that on the voyage? A. Yes. 338

Q. At the time it was open? A. Yes.

Q. You run a rod through it? A. Yes.

Q. And you found solid sugar? A. It would not run; it was quite soft.

By Mr. Black:

Q. What was the diameter of the opening? A. 2½.

Q. All the way through? A. No.

Q. That would be the smallest part? A. That would be the smallest part.

Q. That is, where the cock is. What was the other part? A. I think, in taking an average, that would be about 3½ inches.

Q. Was it iron, or what? A. All iron—through 339
the limbers.

JOHN W. CHAMBERS, called on behalf of claimants, being duly sworn, testifies as follows:

DIRECT-EXAMINATION by Mr. Kirlin:

Q. You were second engineer on this voyage from Porto Rico to New York? A. Yes.

Q. Did you see the sluices from the No. 2 hold in the engine-room open on the voyage, or weren't you there when these tests were made? A. I have seen them open.

340 Q. Did anything come out? A. No.

Q. How many times did you see them open? A. I should think I have seen them twice on the passage.

Q. Did you see them open before the weather got bad? A. No. They generally shut them when they put cargo in.

Q. And when do they open them? A. When we are under way sometimes they open them to see if there is anything in.

Q. When did you personally see them open, after you started from Porto Rico? A. I couldn't say; probably two days, three days, afterwards; I couldn't say.

341 Q. Did anything come out? A. No.

Q. When did you next see them open after that? A. I couldn't say. The last time I saw them open was when we were up here on the discharge. I don't think I saw them after that.

Q. You didn't see them open except the one time? A. One time.

Q. Were you there when the engineer put the bar through? A. I run the bar through myself.

Q. That is time you refer to? A. That is the time.

Q. What did you find? A. Solid.

Q. Sugar along with—— A. Sugar and molasses, I suppose it was; I couldn't tell only by the
342 rod. When you took the rod out again it was clogged on it—it was hard.

Q. It wouldn't run? A. It wouldn't run; it was too cold.

Q. After that the sluices were kept shut the rest of the voyage? A. Kept shut the rest of the voyage.

Q. Did you test the after sluices at all? A. Yes.

Q. What did you get out of them? A. Sometimes we got molasses, and sometimes we got nothing at all. If we found molasses we just shut them off again. That was my orders.

Q. You wanted to save it? A. That was my or- 343
ders to save that, in order to run it into the well.

Q. Which sluice was it you put the bar through, or did you test both? A. Tested them both. The No. 2 hold.

Q. Did you find the same in both? A. No. 2 was quite clear. She had a list the other way, you see.

Q. The port side? A. The starboard side was where it ought to be.

Q. There you found sugar? A. Yes, by putting the bar through.

Q. And did you put the bar through? A. Yes. And this was all clear.

Q. Was there anything on the other side? A. Nothing at all. 344

Q. Nothing came out? A. Nothing came out there.

Q. It was on the port side? A. On the port side. She had a list to starboard.

Q. And she kept that list to starboard all the way out? A. All the way out.

CROSS-EXAMINATION by Mr. Black:

Q. Did you go into the No. 2 hold at all after the cargo was discharged? A. No.

Q. You did not go down in the bilges and look at the sugar to see if it was--- A. I didn't go into the hold at all. It was not my department.

Q. How many times did you put this bar through? 345
A. I only tried them once.

Q. You only tried on one side? A. On both sides.

Q. How many times did you try? A. Only once.

Q. Which day? A. I wouldn't say which day. On the voyage up to New York.

Q. Had the vessel got a list then? A. Yes.

Q. How much of a list had she then? A. I should think three feet at the very least.

Q. Did you know of her taking a big lurch at one time? A. I know of her taking a lurch, or taking some water over; but after that I can't tell you no more than that I knew she took water over.

346 Q. Did she have the list at the time she took the lurch, or did the list come after the lurch? A. The list came after the lurch.

PETER CARLSON, called on behalf of claimants, being duly sworn, testifies as follows:

DIRECT-EXAMINATION by Mr. Kirlin:

Q. You are an "A. B." on the *Centurion*"? A. I am bo'sun.

Q. Now, on the voyage from Porto Rico to New York, you were one of the men who went down into the 'tween-decks? A. Yes.

347 Q. To secure the cargo that was adrift? A. Yes.

Q. What did you find down in the No. 2 'tween-decks? A. In the No. 2 'tween-decks there was a lot of molasses—casks were smashed all to pieces.

Q. How many were smashed? A. I couldn't say exactly how many, but about ten or twelve was what I could say—yes, there was.

Q. Was the rest of them shifted? A. Yes, they were all shifted.

Q. Which side were they shifted to? A. I couldn't say which side it shifted on; but they had been rolling from one side to another.

Q. The ship had a list at that time? A. The ship had a list, and, of course, they shifted over to starboard, because she had a heavy list to starboard.

348 Q. What means did you take to secure the cargo at sea? A. All I could with planks, and wedged them up as good as we could.

Q. How long were you down there working at that? A. We were down about an hour and a half —our watch. I belonged to the port watch.

Q. Was the other watch down? A. The other watch was down. I don't know how long they were down. Of course we were called down.

Q. How many men from each watch were down? A. Two from each watch.

Q. Two from each watch? A. Besides the mates.

Q. Did you go down in the No. 3 and No. 4 be- 349
tween-decks? A. No, I was not down.

Q. You know they did go down? A. Yes.

Q. The other watch went below there? A. Yes.

Q. Did you see this cargo stowed in Porto Rico? A. Yes.

Q. Was it dunnaged? A. It was well stowed, as far as I understand it.

Q. Had dunnage around under the ends of the casks? A. Yes.

Q. And made beds for the casks, with the dunnage put in? A. Yes.

Q. When you got to New York did you find the cargo in about the same condition you saw it in at sea? A. Just the same condition. 350

Q. Had your temporary stowing held it? A. Yes—all.

Q. This was the day after the ship took the list that you went below, was it? A. Yes.

Q. And did the securing of the cargo straighten her up at all? A. Oh, it couldn't be done.

Q. You couldn't straighten her? A. No.

Q. What kind of a voyage would you call this, a very rough one? A. I call it a rough voyage.

Q. The sea coming on board all the way up? A. Yes.

Q. Much water? A. The most was amidships. Of course the sea was coming from the starboard quarter.

Q. Was anything carried away? A. That deck 351
cargo was shifted—shifted the deck cargo.

Q. And some deck damage was done to the ship? A. Yes—rigging of the main mast.

Q. And the pipes? A. And the pipes.

Q. Ventilators? A. Two ventilators.

Q. And the rail? A. Yes.

Q. All damaged? A. Yes.

352 CROSS-EXAMINATION by Mr. Parkin:

Q. How long have you been going to sea? A. Eighteen years.

Q. You have been in a great deal rougher weather than you had on this voyage? A. Yes; I had one coming across last Christmas very rough.

Q. You didn't have anything to do with the stowing of the cargo down in Porto Rico? A. No.

Q. You didn't pay any attention to that? A. No.

Q. Have you ever attended to the stowing of a cargo of molasses and sugar before? A. No; I have been in ships with it, but I never had anything to do with it.

353 Q. You don't know, then, what the usual way of stowing that is at all; you don't know anything about that, do you? A. No; I couldn't say anything about that.

Q. When you went down in the No. 2 hold was all that cargo there adrift? A. Yes.

Q. In the 'tween-decks? A. In the 'tween-decks; yes.

By Mr. Black:

Q. How many of these casks did you say were broken when you went down? A. About ten or twelve; I didn't take any notice.

Q. No special notice. Were they broken more in 354 one place or all over alike? A. All over alike.

Q. Were the broken ones on top or below—the top tier or the lower tier? A. The top tier.

Q. Were the lower tier all secured and in place? A. Yes.

Q. Only the top tier that was loose? A. The top tier; and what was laying on the hatches, from the hatches down to No. 2 in the hold. There was a lot of casks of ginger, and they were all mixed up together.

Q. Casks of ginger in with the molasses? A. Yes.

Q. In the same between-decks? A. In the same 355
'tween-decks.

Q. How many casks of ginger were there? A. I don't know how many.

Q. Were any of those broken? A. One or two of them.

Q. Were they on top of the molasses, or underneath the molasses? A. On top of the molasses.

Q. And no casks, so far as you noticed, of the lower tier were broken, were they? A. No.

Q. You say it was all over. Do you mean that all through the length of the between deck and on the top tier they were broken, or more in one place than another? A. They shifted and rolled over, and there were casks lying here and there, all broke 356
and smashed to pieces.

Q. Through the whole length of the No. 2 hold? A. No; in the hatchway.

Q. In the hatch? A. Yes.

Q. But not all the way? A. No.

By Mr. Kirlin:

Q. You mean from the hatch back to the engine-room bulkhead? Is that what you mean? A. Yes.

By Mr. Larkin:

Q. There were two tiers of hogsheads in the 'tween-decks? A. Yes; I don't think there can be more than two. 357

Q. There were two? A. I think it is two.

Q. And some of the hogsheads in both tiers were broken—both the upper tier and the lower tier of hogsheads of molasses? A. Yes.

By Mr. Kirlin:

Q. Which is it? Do you understand the question just put to you? In answering Mr. Black, I understood you to say that there were none of the hogsheads in the lower tier that were actually broken, but it was only the hogsheads in the upper tier.

358 Was that right? A. Excuse me. What I mean is, from the hatchway aft there was nothing the matter in the lower tier. But on the side of the hatch; on the ship's side.

Q. There was something the matter with the ground tier? A. With the ground tier.

Q. Along the side of the hatchway some of the ground tier casks were broken? A. Yes.

Q. But from the hatchway abaft to the engine-room bulkhead the ground tier was not broken? A. They were not smashed, but they were empty.

By Mr. Parkin:

Q. Were the empties knocked in? A. No.

359

By Mr. Black:

Q. Were there none of them with the heads knocked in anywhere? A. Some of them—many were smashed, of course; some of them empty and not knocked in.

Q. Was there any cargo stowed on top of the between-deck hatch covers? A. Yes.

Q. What cargo was that? A. Sugar.

Q. In the between-decks? A. Yes.

Q. Are you sure of that? A. Yes.

Q. What kind of packages of sugar? A. In hogsheads—sugar in hogsheads.

Q. In the between-decks? A. Yes.

360

By Mr. Kirlin:

Q. After you finished loading the lower hold you put the covers on the between-deck hatchway, did you? A. Yes.

Q. What did you put on top of those from there up to the main deck hatchway? No. 2 I am asking you about. Did you have anything on top of those covers in the 'tween-decks? A. So far as I can say, I didn't take any notice of the stowing of cargo at all, because it isn't my business; I am to work for the ship.

Q. When you went down—— A. When we went down in the hold for securing after she took the list—after she was shifting the cargo—it was all over in the hatchways, and all over. 361

Q. You went down hatchway No. 2? A. Yes.

Q. And what did you find when you took the covers off? What was right underneath the top cover? A. There was empty casks of molasses, and there was sugar.

Q. There was some sugar on those covers? A. Yes; but the sugar was stowed in the fore part from the No. 1 hold between decks forward. There was sugar in bags, sugar in hogsheads; and through the ship's rolling and shifting the cargo I supposed they rolled off. 362

By Mr. Black:

Q. In that between-decks there is no bulkhead between No. 1 and No. 2? A. No.

Q. It is all open? A. It is all open.

363

364 U. S. DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

JOSÉ BREGARO,
Libellant,

vs.

The Steamship "CENTURION," the New York and Porto Rico Company,
Respondent.

365

THE AMERICAN SUGAR REFINING COMPANY

vs.

SAME.

NEW YORK, April 29, 1893.

DEPOSITION of JOHN W. MALONEY, taken on behalf of the respondents at the office of Mr. George A. Black, this day.

366

APPEARANCES:

WM. W. MACFARLAND and WILLIAM PARKIN, Esqrs., for the Libellants.
GEORGE A. BLACK, Esq., for the Respondent.
J. P. KIRLIN, Esq., for the Claimants.

JOHN W. MALONEY, being duly sworn, testifies as follows:

DIRECT-EXAMINATION by Mr. Black:

Q. Where do you reside, Mr. Maloney? A. Twelfth street, Brooklyn.

Q. What is your business? A. Purser. 367

Q. Employed by whom? A. By the New York and Porto Rico Steamship Company.

Q. How long have you been in their employment? A. Since January, 1890.

Q. And before that, what was your business? A. Master of sailing vessels.

Q. For how long a period have you been a master of sailing vessels? A. Since 1872.

Q. And as such master, have you ever been in the West India trade? A. Yes, sir.

Q. For how long a period? A. Since 1882.

Q. How many years? A. About eleven years, including this present year; five years master in the West India trade—sailing vessels. 368

Q. When did you first become acquainted with the steamer *Centurion?* A. January 16th of the present year.

Q. Was that the time she came under the charter of the Porto Rico Company? A. Yes, sir.

Q. And did you have anything to do with preparing her to receive her cargo when she was delivered to the defendant company—to the Porto Rico Company? A. No, sir; she was prepared by the captain and delivered to them.

Q. Did she carry a cargo on board on her voyage in January, 1893, from New York? A. Yes, sir; she commenced to load on that date for Porto Rico. 369

Q. What kind of cargo? A. General cargo.

Q. Did any part of it consist of bleaching powders or soda ash or any chemicals of that character? A. Not in our cargo; no, sir; she had some previous to that.

Q. How do you know she had such chemicals on board previous to that? A. By the captain and officers on board, and by what she left in the hold in the way of sweepings.

Q. Did you see what was left on board in the hold in the way of sweepings? A. Yes sir; there was some left there when cleaning her up.

370 Q. When you arrived in Hayti, you loaded some molasses at the port of Ponce, did you not? A. In Porto Rico; yes, sir.

Q. At the port of Ponce, in Porto Rico? A. Yes, sir.

Q. What portion of the vessel was that two hundred and fifty casks of molasses put in? A. It was put on the between-decks in the after No. 2 hold and on the between-decks in the forward No. 3 hold.

Q. What proportion of that was in the No. 2 hold between-decks? A. About two hundred hogsheads.

Q. And the balance were put where? A. In the
371 forward No. 3 hold.

Q. Before loading that molasses in the between-decks, did you make any inspection yourself of the between-decks? A. Yes, sir; not a thorough inspection; merely went over it.

Q. In your examination of it did you discover what its condition was, as to being suitable or not for carrying a molasses cargo? A. Yes, sir; it appeared to be tight and suitable in every way to carry liquids or molasses.

Q. What kind of a deck was that between-decks? A. Iron deck.

Q. What, if anything, was there around the hatches? A. There was a small hatch for passing
372 coal or grain, or any cargo of that description, into the lower hold.

Q. Was that a cargo hatch? A. That was used for that purpose, and trimming for coal or grain.

Q. What other hatches were there? A. What they call manholes were there, but all those were closed up.

Q. And what other hatches? A. Only loading.

Q. Was there anything in the way of coamings round the loading hatches? A. Yes, sir; iron coamings, about fifteen inches high.

Q. Did each of the hatches have those coamings?

A. Yes, sir; that is, each of the between-decks 373
hatches.

Q. I am speaking of them. Was there any coamings round the other hatch you have mentioned —used for trimming? A. No, sir.

Q. Or bunker hatch? A. No, sir.

Q. Was there a cover on this bunker hatch? A. Yes, sir.

Q. Did you have any conversation with anybody on the vessel with respect to the condition of the lower hold before putting in this cargo of molasses?

Objected to by Mr. Kirlin as immaterial. Same objection by Mr. MacFarland.

A. Yes, sir; I did. 374

Q. Who was the person you conversed with?

Objected to by Mr. MacFarland as hearsay. Same objection by Mr. Kirlin.

A. The captain and officers.

Q. Please detail the conversation about the condition of the between-decks which you had with the captain of this vessel?

Same objection by Mr. Kirlin and Mr. MacFarland.

A. I asked the captain if the between-decks was tight, as I wanted to stow molasses on them if tight, and the drainings and pipes were clear; he 375
called the mates and asked them that question.

Q. In your presence? A. Yes, sir. They said the between-decks were tight, the hatches hadn't been removed since they were caulked down for grain.

Q. Anything said about the condition of the scuppers? A. Said they were all clear.

Q. What experience have you had as to the proper method of stowing cargoes of molasses? A. Our experience in stowing molasses is to stow it bung up, bilge free.

Q. No; that does not answer the question. I want to know how much experience you have had

376 as to the proper method of stowing molasses? A. I have had experience in sailing vessels and steamers; we have been carrying molasses at different times on these steamers since I have been going on them.

Q. And how many steamers have you carried molasses on? A. I have had molasses on three different steamers in the between-decks.

Q. And how many voyages have you carried molasses on sailing vessels? A. Some five or six.

Q. Now tell us how this molasses was stowed in the number two between decks of this vessel? A. Stowed in two tiers, on proper dunnage and chocks, bung up, vents open, bungs in and vents open.

Q. How far forward in that between decks did
377 this molasses stowage extend? A. The two tiers came as far forward as the after end of the number two hatch—the two heights; then there was one height on the port side, about two rows—or one row, and on her starboard side about three or four rows.

Q. You mean the starboard and port side of the hatch number two? A. Yes, sir.

Q. Extending from the hatch to the wings? A. Yes, sir.

Q. And only one tier high there? A. Yes, sir.

Q. Did you see to the stowage yourself? A. Yes, sir.

Q. What was its character as to being proper and
378 a sufficient and good stowage? A. It was properly done.

Q. Was there anybody there on behalf of the owner of this cargo, who was present at this stowage?

Objected to by Mr. MacFarland.

A. He had a cooper on board, who inspects as well as looks after the liquids.

Q. Did you have any talk with that person about the stowage of this particular cargo? A. Yes, sir.

Q. What did you say and what did he say?

Objected to by Mr. MacFarland.

A. I asked him if the cargo was stowed in good order and condition; he said it was properly stowed. 379

Q. And in the stowage of this cargo, who had charge of it? A. In what way do you mean?

Q. Was there any stevedore employed? A. Yes; we have a regular stevedore on the ships.

Q. Had he been a man engaged in that business, to your knowledge, any length of time? A. Yes, sir; four years he had been working, to my knowledge, or three and a half, and over; three years previous to that he had been on the ships.

Q. Employed by your people on other vessels? A. Yes, sir.

Q. Was he a competent man? A. Yes, sir.

Q. Now, you speak about the molasses having vents in it; will you describe what those are? A. They are two small holes, one each side of the bung, about six inches from the bung. 380

Q. When the molasses comes on board the steamer, are the hogsheads full? A. No, sir.

Q. How nearly full? A. Seldom full; if they are full when they come, they ferment to that; but in filling molasses, they fill it short of being full about five or six inches.

Q. They never fill the hogsheads full? A. No, sir.

Q. And when they came aboard were those vents closed or open? A. Closed coming aboard.

Q. With what? A. With grass or leaves, or anything they can make a plug of handy. 381

Q. A temporary plug? A. Yes, sir.

Q. When they get aboard and in their beds, with their bungs up, what is done with the plugs? A. They take them out.

Q. For what purpose? A. To allow them vent.

Q. Have you any knowledge as to the properties of molasses on a voyage; does it ferment? A. Yes, sir.

Q. What is the consequence of such fermentation? A. A loss, generally, of molasses.

Q. How does it get out? A. Ferments through those holes.

382 Q. It floods out through those holes? A. Yes, sir.

Q. And in flowing out, does it produce any effect on the casks themselves? A. Yes, sir.

Q. What? A. Makes them very much molasses, very greasy.

Q. And have you experience as to the effect and consequence of this molasses wetting the outside of the casks, on a voyage, as to the position the casks take? A. It makes them very easy to move; after the molasses covers the cask, there is nothing will hold it.

Q. And what is the result of that, in your experience? A. If it gets any play at all, it will work bung down.

383 Q. The cask will roll over and work bung down, and the stuff rolls out? A. Yes; very often the case.

Q. During the progress of this loading did you see the captain of the steamer on board? A Yes, sir.

Q. Was there any suggestion or observation made by him to you as to the way in which you loaded this cargo; if so, what?

Objected to by Mr. Kirlin as hearsay, irrelevant and immaterial.

Same objection by Mr. MacFarland.

A. None whatever.

Q. You went out in this vessel, didn't you, to
384 Hayti? A. To Porto Rico.

Q. You went with her to all the ports she touched at? A. Yes, I went round the island with her, and came back.

Q. Were you present when the four hundred and sixty-five hogsheads of sugar were taken on board? A. That was at Arroyo, sir. The bill of lading will tell you.

Q. It says Arroyo? A. I was on board part of the time, and on shore part of the time.

Q. Whereabouts were those four hundred and sixty five hogsheads of sugar stowed, to your knowledge? A. Some in lower number two and some in

lower number three, but what proportion I can't 385
say.

Q. Before leaving the stowage of the molasses, I meant to ask you about the method in which the portion of it which was stowed in the number three between-decks was stowed? A. I beg your pardon.

Q. (Last question repeated by the stenographer.) A. There were about fifty hogsheads stowed in number three forward end, stowed in the same manner as molasses is stowed.

Q. Why did you select the forward end of number three for the stowage of these fifty hogsheads? A. Because it was that part of the hold where all drainings would be, or it was the lowest part of the 386
hold between decks.

Q. Did the molasses in number three come up against the engine bulkhead? A. Yes, sir.

Q. And did the molasses in number two come up against the engine bulkhead? A. Yes, and against the bulkhead; in number three it was an iron bulkhead.

Q. And was it an iron bulkhead in number two? A. Yes, sir.

Q. And why did you select the after end of number two as the place of stowage for the molasses there? A. For the same reason as number three, because it was the lowest part.

Q Please explain why the after end of number 387
two and the forward end of number three could each be the lowest end of the ship? A. Because of the sheering.

Q. She rises stem and stern? A. Yes, sir.

Q. And sinks towards the centre? A. Yes, sir.

Q. Who gave you the information that those were the lowest parts of the ship; how did you find it out? A. By sight.

Q. You could see it from the construction of the vessel? A. Yes, sir.

Q. Did you make any inquiries as to the condition

388 of the between-decks in number three from anybody?

Objected to by Mr. Macfarland.

Some objection by Mr. Kirlin.

A. I asked if the ship's drain pipes were clear from this hold, the same as I did in number two; they gave me the word it was, that no draining in number three would be carried down except—that any draining in number three would be carried down into the sluices by pipes in the forward end of the hold.

Q. What other cargo was stowed in number two between-decks besides the two hundred hogsheads of
389 molasses? A. Sugar in bags and also in hogsheads; ginger in barrels or casks.

Q. In the between-decks between number one and number two is there any separation? A. No, sir.

Q. Was this between-decks full after you had put in the sugar and the things you have mentioned? A. Not quite; no, sir.

Q. What portion of it was empty? A. There was a space empty in the forward part of the number two hatch, and also the after end of the number two hatch.

Q. Was there anything on the hatch itself—of the number two? A. Yes, sir; the middle part filled up with bags of sugar.

390 Q Did that lie on hatch covers or on cargo stowed in the hatch? A. On the between-deck hatches—carried up the width of the hatch.

Q. Were or were not the hatch covers on the hatch, the width of the hatch? A. Yes, sir.

Q. Over the whole of it? A. Yes, sir.

Q. And cargo was on top of them? A. Yes, sir.

Q. And extending the width of the hatch? A. Yes, sir.

Q. Was there anything in the shape of dunnage used in the stowage of this cargo? A. Yes, sir; it was all properly dunnaged.

Q. Now, were there any stanchions in the be- 391
tween-decks? A. Yes, sir.

Q. In both the forward and aft between-decks? A. Yes, sir.

Q. Were they alike in each between-decks? A. They were the same material; yes, sir; same size iron, but not situated the same distance apart—as, say, for instance, the space between the stanchions in one hold would differ from the space between the stanchions in another hold.

Q. Which had the greater space? A. The number two after-hold would have space in that enough to roll a hogshead between the stanchions.

Q. And in the number three between-decks? A. There wasn't space to roll a hogshead in the forward 392
end; in the after end you would find a space; but where the molasses were stowed in the forward end of number three, there wasn't space enough to roll a hogshead between the stanchions

Q. And in the after-hold of number two? A. There was.

Q. Was there any reason why you should prefer to stow this molasses in the between-decks rather than any other part of the ship? A. Yes, sir.

Q. What was that reason? A. Had I stowed it in the lower hold, I would have had to stow five or six tiers to fill the lower hold.

Q. And how was it in the between-decks? A. If I stowed what a merchant wants carried in the 393
way of heights—two or three heights—I would have two or three heights of empty space in the lower hold.

Q. Whereas, in the between-decks what gain is it? A. In the between-decks she carried two tiers.

Q. Just comfortably? A. Yes, sir; just comfortably.

Q. And what advantage to the merchant was there in stowing his cargo in two tiers rather than four or five? A. The molasses would go more safely.

Q. Why? A. Because they allow the lower tiers

394 will receive too much weight if there are four or five heights and strain the casks.

Q. Do you know what effect the removal of the contents of a cask has on its strength and resistance to the pressure of other cargo on top of it or alongside of it? A. No, sir, not to the strict letter, but an empty cask, I know, will not stand the strain of a full one.

Q. Do you know that as a fact that an empty cask will not stand the strain that a full cask will stand? A. Yes, sir; but I don't know——

Q. You do know as a fact that an empty cask will not stand the strain of a full one? A. Yes, sir.

Q. Did you come back to New York on this ves-
395 sel? A. Yes, sir.

Q. Describe the character of the voyage? A. We had fair weather until the second or third day—I think it was the third day—out from San Juan, and then we met with bad weather, and we had a continuation of bad weather for three days.

Q. Well, how did the vessel act in this bad weather? A. She behaved very badly.

Q. Describe what she did? A. Well, I can no more than say she hove down very badly and washed her decks; during the heaving down she shifted cargo or took a very heavy list, and continued until she arrived here; but the weather she came through was unusually bad weather.

396 Q. What caused her to heave down, as you call it? A. Sea.

Q. Was she rolling? A. Heavy.

Q. Was she pitching? A. Yes, sir, very heavy.

Q. And water was coming over her decks? A. Yes; swept fore and aft.

Q. And was there anything which attracted your attention to the condition of the cargo at any time; did you hear any sounds or any indications that it was adrift? A. We could hear that the cargo was adrift in the hold after this heaving down; I think it was the next morning after.

Q. When was it this heaving down occurred? A. 397
I think it was the evening.

Q. You use the expression "heaving down;" what do you mean by that? A. A heavy lurch.

Q. That is, the vessel went over on her side very much? A. Yes; a very heavy lurch; nearly on her beam ends.

Q. In your experience, what effect would that have on cargo stowed in the vessel? A. A heavy lurch on a great quantity of cargo might burst the casks or smash them in a manner that would empty a space in the hold.

Q. And that would throw the rest of the cargo adrift? A. As soon as there was any space for the cargo to get play, nothing could save it. 398

Q. Did you yourself go down into the between-decks at all after this heaving over or lurching? A. Yes, sir.

Q. With respect to the lurching, how soon after that did you go down? A. In the morning, as soon as it moderated.

Q. In order to get down, what was done? A. The hatches were lifted.

Q. Which hatches? A. Number two.

Q. All or part? A. Only part.

Q. And the hatch was taken off? A. One cover, I think.

Q. Who went down? A. The mates, the watch—that is, that portion of the crew that had their 399
watch on deck—and I.

Q. When you were down, what was done with the cover which had been lifted? A. I can't say, sir.

Q. Did any water come down while you were down there? A. There was more or less come down; yes, sir.

Q. What was your purpose in going down? A. To find out what was wrong with the cargo, and secure it.

Q. Describe the condition of things as you found it? A. We found the molasses casks and cargo in

400 that section partly stove up and broken, the whole thing around; that part of the forward part of the cargo was more or less broke, and empty casks.

Q. Was the breakage in both tiers or only one? A. In both.

Q. How were the casks, in respect to their positions—the same as you had put them in? A. No, sir; all out of their position.

Q. Was anything done to secure them? A. Yes; we secured them in the best manner possible.

Q. What with? A. By re-stowing and shoring, &c.

Q. At the time of this going down, had the water subsided somewhat? A. Yes, sir; moderated some-

401 what.

Q. How many hours after this lurching or heaving over was it that you went down? A. Well, say ten hours—twelve hours.

Q. Was that done as soon as it was possible, with reference to the condition of the weather? A. Yes, sir.

Q. And with respect to securing the cargo which was below, was everything done that you thought possible to secure it? A. Yes, sir.

Q. You speak of the vessel having a heavy list; when did that list first become noticeable? A. That morning that we went down, and during the night and morning we noticed it.

402 Q. Had it been a list which increased or not—did it commence or gradually increase, or occur all at once and remain? A. No, sir; it increased.

Q. Did you form any judgment as to what caused that list? A. We thought it was the molasses that was emptying. We saw a number of casks empty and saw the molasses had run out.

Q. The emptying of the molasses on the one side —the side that went up—would lighten that side? A. Yes, sir.

Q. And the lightening of that side in that way would throw the other side down? A. Yes, sir.

Q. How much did that list amount to from the level? A. Two feet, I should say. 403

Q. Which side was the listed side? A. The starboard.

Q. And that side you think was two feet lower down than the port side? A. Yes, sir.

Q. Was anything done to provide for the removal of the molasses which had run out, and prevent its injuring the rest of the cargo? A. Yes, sir; we had holes made into the bulkheads to allow the molasses to escape.

Q. Which bulkhead are you speaking of now? A. Number two bulkhead.

Q. And in what part of that bulkhead were the holes made? A. In the wing near the deck. 404

Q. Near the floor of the between-decks? A. Yes' sir.

Q On the starboard side? A. Yes, sir.

Q. How many holes were made? A. Two.

Q. And before making those holes did you see anything done or did you yourself do anything to ascertain the condition of the between-decks as to the accumulation of any molasses there? A. We done nothing; we inquired—inquired what was the cause of the molasses lodging in the between-decks.

Q. When did you find it had lodged there? A. When we found out the ship had such a list, we went and looked there through a door in the bulkhead from the coal bunker to the between-decks of number two hold. 405

Q. Who went? A. The chief engineer and I.

Q. Describe the condition of this door in the coal bunker? A. About six feet from the side of the ship, in-board, and about two feet above the deck or floor.

Q. Well, how large was it? A. It would be about two feet square.

Q. It is more like a port than door then? A. Yes, sir.

Q. What was it covered with? A. It was not covered at all; it had been left open, when loading.

406 Q. Did you see into the between-decks there? A. Yes; we could see the molasses casks.

Q. And when you discovered there was molasses through there, what was done about it? A. Looking from there, we saw molasses in the between-decks.

Q. Did you take any measures to discover how large an accumulation of molasses there was? A. We could see, by sight, there was a quantity there.

Q. Was it washing about in there? A. Yes, sir; and then there wasn't near the quantity there we expected to find.

Q. How high did it rise, should you judge, on the between decks, on that side? A. Not over two feet;
407 about two feet.

Q. Who was it made the holes in the bulkhead? A. The chief engineer.

Q. What did he do? A. He knocked one through with a cold chisel, and knocked a rivet out.

Q. How large were they? A. Probably the rivet hole was three-quarter iron, and the hole he knocked through an inch and a quarter.

Q. When he knocked them through, what happened? A The molasses ran through into the bunker.

Q. And from the bunker, where? A. Into the coal.

Q. Was there coal in the bunker where you were?
408 A. Immediately it ran from that bunker into a lower bunker.

Q. Through a hatch? A. Yes.

Q. Did you make any investigation of the between-decks in number three? A. Yes.

Q. What did you do there? A. We went to look for the outlet there.

Q. Who went? A. The chief mate and I—I think the chief engineer.

Q. Where did you go? A. Into what they call the third engineer's room, adjoining the bulkhead; it is on the forward side of the bulkhead; beyond number three, that is, on the after end; in a locker in the

room, we found the outlet for any drainings from 409
that number three hold plugged up.

Q. With what? A. Wood.

Q. Wooden plug, driven in? A. Yes, sir.

Q. What was done with that plug? A. We took them out.

Q. Was there more than one? A. Yes, sir; two.

Q. And did you see molasses flow through there? A. Freely; yes, sir.

Q. Where did that go to when it flowed into this engineer's room? A. Through a pipe into the bilges.

Q. Went in the scupper pipes? A. Yes, sir.

Q. Did you say, yes? A. Yes; was forward of the bulkhead in the engineer's room. 410

Q. Near by these holes? A. Yes, sir; the holes were probably five or six inches beyond that.

Q. Were the holes close down to the floor? A. Yes, sir.

Q. Did you learn anything about what provision was made on this vessel for connecting the bilges in the lower hold with the pumps in the engine-room, in the forward part of the vesssel? A. No, sir.

Q. It has been testified here that there was a sluiceway in the bulkhead which separates the engine compartment from the lower number two hold, which sluice was worked from the deck so as to open and shut it, and that the engineer at some time tried that sluice by running a rod through it, 411
pushing it through into the compartment of number two, where this sugar was stowed, and where the drainage and the molasses that came through the scuppers would accumulate, and that he found it all stopped up, all gummed up with a mixture of viscid matter; did you hear anything about that?

Mr. Kirlin: I object. The testimony says it was sugar.

A. No, sir.

Q. Did you see, at any time, any molasses pumped out of this vessel? A. Some molasses pumped out of the after bilges.

412 Q. Did you see any come out of the forward part of her? A. No, sir.

Q. If the molasses had flowed, would not the pumps discharge it from the forward part? A. Certainly.

Q. Do you know what effect on the consistency of a mixture of sugar and molasses a bleaching powder will have, or any chemicals of that character?

Objected to by Mr. Kirlin as immaterial.

A. We had some of that—only from this reason: We had some of that powder in a sack in number two hold—or number one hold, rather—in the between-decks down there, and we wanted to remove
413 it, and it came in contact with some liquid, and the fumes drove every one of us out of the hold; it became a bed of mortar itself.

Q. Where had it come from? A. It was sweepings, been left lying around there, but it formed into a mortar like lime would.

Q. What would have been the proper management in a case of the breaking up of molasses casks, causing emptying of their contents, in order to prevent damages to other cargo—should that molasses have been saved or pumped out?

Objected to by Mr. Kirlin, as immaterial and entirely hypothetical.

Same objection by Mr. MacFarland.

414 A. Molasses is pumped clear of other cargo as soon as it can be got out.

Q. Is that the usual course on vessels carrying cargo combined with molasses? A. Most of the ships leave their bilges open, so as to allow of drainage.

Q. Do you know, as to the nature of these four hundred and sixty five hogsheads of sugar, which was taken on at Arroyo, whether it was what they call "dry" or "wet" sugar? A. Well, it is sugar that is wet enough to drain; there will be a drain-

age from it; in fact, all that Porto Rico sugar, more 415
or less, drains.

Q. What is the character of that drainage? A. Molasses.

Q. That drainage from the sugar, if the vessel is in proper condition, goes away? A. Pumped out, what won't lodge there; what will run we will pump out.

Q. Were you present at the discharge of this cargo in New York? A. No, sir; only the starting of it – the commencement.

Q. How frequently have you fixed hogsheads of molasses on steamers on the between-decks? A. This is the third lot.

Q. And, in your judgment, it is a good and 416
proper stowage, when you have steel or iron decks for the between-decks, to place molasses in the between-decks? A. Yes, in case of tight between-decks, there is no better place to stow molasses.

CROSS-EXAMINATION by Mr. MacFarland:

Q. What was your duty, or function, on this *Centurion* on this voyage? A. Purser, sir.

Q. Purser. You were the purser of the *Centurion*? A. Yes, sir.

Q. Were you supercargo? A. Yes, sir, also.

Q. What did you have to do personally with the loading; did you direct it? A. Yes, sir.

Q. And whether it was good or bad loading, you 417
were responsible for it.

Objected to by Mr. Black, as a conclusion.

A. I don't know how to answer that question.

Q. The loading was done under your direction, whether it was good or bad? A. Also the officers.

Mr. Kirlin moves to strike out the answer.

Q. What do you mean by the officers; what officers? A. The mate.

Q. Did the mate direct you how you should stow? A. No, sir.

418 Q. Then you gave those directions yourself, in regard to the stowage? A. Yes, sir; about stowing of the molasses.

Q. And also of the sugar? A. Yes, sir.

Q. Well now, you had your sugar stowed in the lower hold of the ship? A. Yes, sir.

Q. And that sugar was in barrels or in bags? A. Hogsheads and bags.

Q. And on top of that sugar, on the between-decks, you had your molasses? A. Yes, sir.

Q. That was the most profitable way, I think you said, of stowing for the merchant? A. The safest, for the molasses.

Q. I think you said also that it was the most
419 profitable use of space? A. Well, maybe the space below would cause the ship to be tender.

Q. To what? A. To be tender.

Q. I suppose it is not a very uncommon thing for hogsheads of molasses to get broken and their contents spilled? A. Quite often the case, sir.

Q. It is quite often the case? A. They work bung down very often, and empty.

Q. And then the molasses comes out? A. Yes, sir.

Q. Well, when it does come out, you say you expect it to flow somewhere away? A. Through those pipes leading into the bilges.

Q. And you depend on those pipes to the bilges
420 for protecting the cargo from the floating molasses? A. Yes, sir; and the pumps.

Q. That is the protection? A. Yes, sir; and the pumps.

Q. If the ship is properly prepared to receive such a cargo in such a relative position to each other as this sugar and molasses were, and is properly managed, it ought to work as you have suggested you expected it, so as to carry off any molasses that might get loose? A. Yes, sir.

Q. It did not do so on this occasion, did it? A. The pipes were clear—must have been, to allow that

molasses to go down the bilges, but the bilges were choked up. 421

Q. So that the molasses could run down to the sugar and could not get away from there? A. That was intended.

Q. The molasses would run down to the lower hold, where the sugar was, and there it was stopped? A. Yes, sir.

Q. Could not get any farther? A. No, sir.

Q. Why couldn't it get any farther? A. The pumps, I su pose, were choked.

Q. So it was dammed up there and couldn't get out? A. Apparently; yes, sir.

Q. And what with the rolling of the ship and so on, I suppose it got in among the sugar? A. Yes, sir. 422

Q. Of course, you don't know why that was allowed to happen, personally? A. What, sir?

Q. Why this molasses was dammed up there in the bilge, so that it got into the sugar—you don't know why that was permitted to happen, do you? A. I don't understand your question clearly, sir.

Q. No matter. You had nothing to do with the management of the connections with the bilge? A. No, sir.

Q. Whose duty was that? A. The officer's.

Q. What officers, the first officer or the captain, or the engineer, or who? A. The captain and his officers.

423

Q. Well, the long and short of it is that that molasses, according to your expectation, when it came out of the hogsheads, ought to have gone off where it could be pumped out? A. Yes.

Q. And it did not? A. No, sir; it had choked.

Q. Of course, you are not able to tell, I suppose, when those hogsheads were actually broken that you found broken when you examined them? A. No, sir.

Q. You can't tell what day or hour that happened? A. No, sir; not what moment or hour.

Q. Not what? A. I couldn't tell the minute or

424 hour; but it happened some time during that night.

Q. What night? A. When we had the bad weather.

Q. How do you know it happened during the night? A. On account of the proofs we had.

Q. What? A. Of the ship listing, the cargo moving and the bad weather,

Q. Could you hear the cargo moving? A. We could next morning.

Q. And from the fact that you heard the cargo moving next morning, and from the fact that the ship had listed, you supposed that the molasses casks had broken the night before? A. Yes, sir.

Q. Exactly when the first one broke, or under
425 what circumstances, you did not know? A. No, sir.

Q. Did you go down that same day into the hold, to see exactly what had occurred? A. Yes, sir.

Q. At what time of the day? A. About nine or ten o'clock.

Q. And it was then you saw the condition of the molasses? A. Yes, sir.

Q. One other question. Was the cargo stowed so it could have pretty free play? A. No, sir; it was stowed so that it should not have any play—couldn't have any play.

Q. But finally it succeeded in getting a good deal of play, didn't it? A. Yes, sir.

Q. What was that caused by—the breaking of the
426 casks? A. I suppose that was the cause of it, but I can't tell.

Q. In your experience as a master, and as a supercargo, and so on, do you generally stow liquids above the rest of your cargo? A. If we have a tight deck between them.

Q. What? A. Yes, sir; if we have a tight deck between them.

Q. Then you depend on everything being in order to carry off the liquid, in case anything breaks? A. Yes, sir.

Q. Everything depends on that then, doesn't it, for the safety of your cargo? A. Yes, sir.

By Mr. Parkin: 427

Q. Where were these holes that were made in the bulkhead of number two hatch? A. In the bulkhead.

Q. Where were they made? A. Down near the deck, in the wing.

Q. Down near the between-decks? A. Yes, sir.

Q. Above the sugar? A. Yes, above the sugar; above the deck that was above the sugar—it was just above that deck, that the molasses was on.

Q. They were above the between-decks, in the bulkhead? A. Yes, sir.

Q. And what was on the other side of that bulkhead? A. Molasses.

Q. No, no. Aft of the bulkhead? A. An empty 428
bunker.

Q. The coal bunker? A. Yes, sir.

Mr. Black: An empty bunker, he says.

Q. What was the object of making the holes there? A. To allow the molasses to flow out of the between decks.

Q. It had not been draining there before? A. Not in that section of the ship.

Q. And you found a lot of molasses there, when you made the holes? A. Yes, sir.

Q. When were the holes made? A. They were made - well, I can't name the hour and the day.

Q. How long after you had been down into the 429
hold; was it the same day you went down into the hold? A. I won't say for certain whether it was that same day or not.

Q. It was some time after that? A. Yes, sir.

Q. When you went down into the hold, had you found the molasses lying there on the between-decks? A. Not up to the hatch, not then, but there were signs of it all over and I was afraid of it going down through the hatches on to the sugar.

Q. You were afraid what? A. That the molasses had gone through the hatches.

Q. Had gone through the hatches? A. That

430 number two hatch, in on to the sugar in the lower hold.

Q. And for that reason you wanted to open——? A. I wanted to keep that between-decks clear of molasses.

Q. Did you go into the lower hold at all? A. No, sir.

By Mr. Kirlin:

Q. Maloney, whom are you employed by? A. New York and Porto Rico Steamship Company.

Q. What is their business? A. They run a line of steamships to Porto Rico.

Q. And this steamer was running in that line
431 when this damage occurred? A. Yes, sir.

Q. Under a charter-party? A. Time charter.

Q. Did you have a copy of that with you on the voyage? A. I think I did.

Q. You were acquainted with the terms of it, were you not? A. Yes, sir.

Q. The same charter that they use for chartering all their ships, wasn't it? A. Yes, sir; I think so.

Q. Don't you understand that, under those charters, you have, as supercargo, the sole responsibility for the cargo, in every respect?

Objected to by Mr. Black as immaterial.

A. I understand I have to look after the handling
432 of her cargoes and see they are taken care of.

Q. You don't recognize the right of the officers to interfere in any way with your directions in regard to the cargo, do you?

Objected to by Mr. Black as immaterial and incompetent.

A. No, sir.

Q. You understand you are the commander, so far as the cargo is concerned? A. Yes, sir.

Q. If they objected to your stowing cargo in a

certain place and you thought it proper to stow it in 433
that place, you would stow it there, wouldn't you?

Same objection by Mr. Black.

A. Yes, sir, in this case, for instance —

Q. No; I just asked you a straight question. What kind of a cargo did you carry outward? A. A general cargo.

Q. What did it consist of? A. Well, I was going to say everything that is manufactured in the United States.

Q. Did you take anything in bags? A. Yes, sir; flour—lots of it.

Q. Anything else in bags? A. Corn.

Q. Yes? A. Pepper. 434

Q. Yes? A. Oats.

Q. Yes. What else in bags? A. I can't think of any more just now.

Q. Now, when the ship was delivered to the Porto Rico Company under the charter, didn't you go and examine her before the cargo was put on board? A. Yes, sir; I was on board of her that morning she commenced to receive cargo.

Q. You were satisfied with her condition at that time, weren't you? A. Well, I don't pretend to say here much about the ship.

Q. Well, I would like to have you say whether you were or not—not now, but weren't you then? A. I would have liked to have had her a little cleaner. 435

Q. You did not say anything about that at the time, did you? A. No; I didn't object to her.

Q. You went ahead and had the cargo stowed in her as she was? A. Yes, sir.

Q. Where was this bleaching powder and soda ash that you say was lying about? A. In the lower hold.

Q. Which hold? A. Number two.

Q. You made no remark upon that at the time? A. No.

Q. Why didn't you have that cleaned up, if you

436 thought it was liable to cause damage? A. Well, we had no liquids of any kind to stow in that hold, and I didn't know the nature of the stuff then.

Q. Well, how do you know it was soda ash and bleaching powder? A. From what they told me.

Q. Who told you? A. Some of the officers.

Q. Which officers? A. Can't say which one, first or second.

Q. First or second mate, was it; was it one of those two? A. Some of them, I can't say which.

Q. Was it one of those two? A. Yes, sir.

Q. Why didn't you tell him he had better take that out? A. Well, I didn't think it was necessary.

Q. Your stevedores stowed the cargo here in New
437 York, didn't they? A. Yes, sir.

Q. And your stevedores discharged it in Porto Rico, didn't they? A. Yes, sir.

Q. Did your stevedores clean up the holds there for the cargo to come this way? A. We generally tell the mate to take what men he wants from our stevedores, and clean up the hold for the cargo.

Q. You pay the mate, don't you, for what he does? A. That is a part of his duty.

Q. You pay the mate, don't you, for what he does in that way? A. How do you mean—pay the mate's salary?

Q. You pay him for what he does for you in Porto Rico, for instance, in connection with the cargo? A.
438 No, sir.

Q. Don't you pay him any money at all? A. Don't pay him a cent.

Q. Don't your agents? A. I don't know.

Q. Does not the Porto Rico Company pay him? A. I could not say.

Q. Do you deny any knowledge of what money the mate receives for what he does? A. I can't say.

Q. Do you deny any knowledge of whether he receives any payment or not? A. Yes, sir.

Q. Don't you know it is a common thing for the mates to tally cargo and perform other services re-

specting it in Porto Rico, and be paid for their ser- 439
vices by some one of the Porto Rico Company?

Objected to by Mr. Black.

A. I don't know about their receiving money.

Q. Your men clean up the holds in Porto Rico? A. Under the mate's instructions.

Mr. Kirlin moves to strike out the answer.

Q. Was it not your men's duties to clean up the holds? A. Under the mate's instructions; that is the only way I can answer.

Q. Your men do the sweeping?

Mr. Black objects to the word "your" as not expressing the proper sense, the men not be- 440
longing to the witness.

Mr. Kirlin: Well, they are in the service and employ of the Porto Rico Company.

A. Those men are hired by me—the stevedores, and they are given over to the mate to clean the hold up; he superintends them, that is, the men to clean up and make the hold proper for cargo.

Mr. Kirlin objects to all about the mate, and moves to strike out so much of the answer as refers to him.

Q. Well, were the holds cleaned up in Ponce and in the other ports in Porto Rico before stowing the 441
cargo? A. Yes, the holds were cleaned up.

Q. The lower hold and the between-decks? A. Yes, sir.

Q. And if there was any soda ash there at that time, was it not taken out? A. In the holds, yes, sir.

Q. Before taking in this cargo of sugar? A. Yes, sir; but we didn't know what was lying underneath, in the bilges; that I didn't look into; I didn't consider it my duty.

Q. Now, you went through the between-decks, you say? A. Yes, sir.

442 Q. In the number two and number three holds? A. Yes, sir.

Q. Did you examine this coal hatch you speak of in the after part of number two hold? A. Not to examine it to see, to pick it with anything to see if it was caulked tight; saw it covered over and apparently caulked tight, and the master and mates satisfied me it was perfectly tight.

Q. Isn't there a little rise around there, about three inches? A. Yes, sir; there are the coamings round.

Q. You said, on your direct, there was no coaming round that hatch? A. That is round the manhole?

Q. But there is a coaming round the hatch? A.
443 Yes, sir.

Q. And the covers were on and it seemed to be tight? A. Yes, sir.

Q. The covers were on the manholes? A. Yes, sir.

Q. And appeared to be tight? A. Yes, sir.

Q. Were they caulked? A. I don't know how they were tightened.

Q. Did you have any conversation at all with the officers about how tight they were or ought to be? A. Yes; I asked them if that deck was tight enough to stow liquids or molasses in so as not to leak down to dry cargo underneath, and it was.

Q. Was anything said about caulking the man-
444 holes? A. No, sir—only the hatches hadn't been removed since they carried grain; they were caulked down at that time, the men said, the mates said.

Q. That is, the hatches? A. Yes, sir.

Q. Do you mean the manholes? A. No, sir, the hatch.

Q. When you arrived in New York, you examined the cargo in the lower hold, didn't you? A. No, sir.

Q. Weren't you in the lower hold at all? A. No, sir.

Q. Do you know if there was any damage to the cargo immediately under the between-decks? A. No, sir, I don't know.

Q. You were satisfied with the examination you made that the between-decks was tight enough to warrant you in stowing molasses in there? A. No, sir; my examination was not enough for that; hadn't they told me it was tight and I could rely on it, I would have gone further with that examination of it. 445

Q. But you were satisfied from what you saw and what they told you that it was in proper condition? A. Yes sir.

Q. And you stowed it? A. Yes sir.

Q. Have you told us who it was that told you anything in regard to the condition of the between-decks? A. The captain was the man, and he called his mate, and, I think, the second mate. 446

Q. Do you know the names of those gentlemen? A. Well.

Q. Was Mr. Chesney one? A. Mr. Chesney, and Mr. Joseph Watson was the second officer when I was on board.

Q. And a Mr. Watson was captain?. A. Yes, sir.

Q. When you were in the between-decks, did you look to see where the scuppers were, and how many there were in the between-decks? A. No, sir.

Q. Did you see any scuppers there at all? A. No sir.

Q. Did you look to see whether there were any scuppers in the number three between decks? A. No, sir.

Q. Did you look at any time afterwards? A. No, sir. 447

Q. What time of the day was it when you went down in the between-decks to see? A. Nine or ten o'clock in the morning.

Q. How was the sea running at the time? A. Somewhat moderate to what it had been.

Q. Was the water washing over the ship? A. Yes, sir.

Q. At the time you went down below? A. Yes, sir.

448 Q. There were tarpaulins on the hatches, weren't there? A. Yes, sir.

Q. And when you went below, weren't the tarpaulins put on again, over the hole? A. They may have been, partly.

Q. Wasn't the cover put back? A. I ain't quite clear on that.

Q. Well, you would have been likely to have made some remark, wouldn't you, if you saw water coming down through that hole? A. I don't know, sir; if there had been much water coming down I would have noticed it.

Q. Did you notice any water coming down? A. I can't say I saw any more than a spray.

449 Q. You say more or less water went down; you simply meant a few drops of spray, did you? A. A few drops of spray, and the top of a sea will make a spray, too.

Q. Was there a pailful of water went down there? A. I can't say that.

Q. Will you swear there was a pailful? A. Yes, sir; more, too.

Q. How much more? A. I could not say.

Q. Was there enough to do any damage? A. I can't say whether there would be any damage occur from what went down or not.

Q. Were you right round the neighborhood of the hatch all the time? A. Most of the time; yes, sir.

450 Q. Did you get wet from the water? A. No, sir.

Q. Did you say anything to anybody about the water coming in? A. I might have asked them to haul the tarpaulin.

Q. Well, did you? A. I can't remember clearly about that, sir.

Q. You don't remember shouting out to shut up that hole? A. No.

Q. Or to put the tarpaulin over the hole? A. No, sir.

Q. You don't remember that? A. No, sir.

Q. Now, what day was it you went into the coal bunker—the same day you went in the between-

decks? A. I am not clear on that, sir; can't swear 451
to that.

Q. When you were in the between-decks did you see any considerable quantity of molasses there, or was the molasses gone? A. There was not much; there wasn't near the quantity I expected to find.

Q. How much did you find? I am speaking now of the time you went into the between-decks yourself? A. What do you mean—in the hatchway or bunker?

Q. When you were in the hatchway? A. We couldn't see any molasses there.

Q. You saw the casks had been broken? A. Only what molasses had been spilled on the casks and through the hold. 452

Q. Didn't you see casks had been broken then? A. Yes.

Q. How many? A. I couldn't say.

Q. As many casks were broken then as at all, weren't they? A. I don't think so; I think more after we had more bad weather.

Q. You think more casks were broken later? A. I won't be sure, but I think she broke more casks the second bad weather; we had two severe gales on that ship.

Q. Was it between the first and second or after the second that you went into the coal bunker? A. Between the first and second.

Q. Then it was between the first and second you 453
went into the between-decks through the hatchway? A. Yes, sir.

Q. Those gales were not far apart, were they? A. No; twenty-four hours.

Q. So that it was the same day that you went into the between-decks, through the hatch, and that you went into the bunker? A. It may have been; I won't swear to that; I aint certain.

Q. Well, you went into the coal bunker and looked through a door—did you put a stick down? A. We could see the depth of the molasses there.

Q. How could you tell how deep it was? A. Be-

454 cause the deck in the coal bunker is the same deck as in the number two between-decks.

Q. How do you know that; there is an iron bulkhead between them, isn't there? A. Yes; but we could tell by the height of the door.

Q. How did that indicate to you, if you couldn't see the floor on the other side of the door? A. You can't.

Q. You said there was molasses there? A. So there was. The molasses—in the condition the ship was in then, in the position she was lying in then, the molasses laid up, like that (moving his hands) in there—the molasses casks—we could see the deck.

Q. How far did this molasses extend over across,
455 athwart ship? A. Probably come in about six or seven feet.

Q. And you think it was as much as two feet deep? A. In the wings?

Q. Yes. A. Yes, sir; a foot and a half to two feet deep.

Q. If the ship only had a list of two feet, and the molasses was two feet deep at that side, would not the molasses extend all the way across the deck? A. No; the way the molasses was lodged in that corner, it might stand a foot and a half deep in the corner, and it would not extend to the 'midships of the deck, on account of the crowning and the list also.

456 Q. What do you mean by the crowning? A. (The witness makes a circular motion with his hand.)

Q. You mean the raised portion of the deck amidships? A. Yes, sir; certainly.

Q. How much molasses did you drain off through this hole you say the engineer made in the bulkhead? A. About two hogsheads, possibly.

Q. About two hogsheads? A. Yes, sir; or two puncheons.

Q. Which were they, hogsheads or puncheons? A. They were called puncheons by bill of lading.

Mr. Black: They are called casks in the bill of lading.

The Witness: Some call them puncheons, and 457
some casks, and some call them hogsheads.

Q. What was done with that hole after you got the molasses out; was it stopped up? A. No, sir; I don't know what was done.

Q. Was the engineer who cut that hole named William John Murray? A. I don't know his name; I know it was the chief engineer.

Q. All the molasses that escaped in the between-decks went down below through the scuppers, except about two puncheons? A. About two puncheons; yes, sir.

Q. Were those holes that remained in the bunker left open all the rest of the way up—any more molasses come through? A. As far as I know they 458
were.

Q. You don't know? A. No.

Q. Were you ever down there again after that morning? A. I was down there the next morning; I think the following morning.

Q. Now, you also refer to having opened some holes in the bulkhead at the forward end of number three hold; which side was that on? A. Starboard side—same side, that is, as number two.

Q. Those holes, you say, came in through the engineers' stateroom? A. Into a locker in his room; there they emptied into a pipe going into the bilges.

Q. What do you mean by a locker in his room? A. A little wooden casing made round the lower part of 459
the room forms a seat and a locker inside for stowing away different articles.

Q. And you say there was a scupper right under that? A. There was a scupper under that.

Q. Was that against the side of the ship? A. Yes.

Q. And were the holes right up close to the side? A. The holes were in the bulkhead, close to the side.

Q. How high above the deck? A. Two or three inches.

Q. How much molasses did you get through there? A. From one to two hogsheads, possibly.

460 Q. Did that molasses that you got through the holes leading in the engineers' stateroom, and through the hole from the bunker, relieve the list any? A. Very little, if any.

Q. Was there any bilge pipe seen where you opened the hole in the forward bulkhead—that is, the bulkhead between the number two and the bunker?

Mr. Black: Scupper pipe?

Mr. Kirlin: Scupper pipe, yes.

A. I don't know about that; I couldn't tell you where that was located; but the after one was within a foot, I suppose, from the holes in the bulkhead to the pipes leading into the bilges.

461 Q. Did you say anything to the officers or engineers of the ship about the management of the sluices on the way up from Porto Rico to New York? A. I can't say.

Q. You don't remember saying anything? A. I don't remember.

Q. (Paper shown witness.) The bill of lading for the cargo of sugar shipped at Arroyo is signed by J. W. Maloney, purser; that is your signature, is it? A. Yes, sir.

Q. (Paper shown witness.) And the bill of lading for the cargo of molasses shipped at Ponce is signed by Fritz, Lunt & Co., T. Umbach, as agent? A. They are the agents for the ship in that port.

462 Q. Are they the agents for all the vessels for the New York and Porto Rico Company at that port? A. Yes, sir.

Q. Now, but for the severe weather you had coming up, and the shifting of the cargo, don't you think the molasses and the sugar would both have arrived here without any other damage than from that arising from the usual drainage? A. Except the unusual bad weather.

Q. Yes? A. Yes, sir, that was the worst weather I have experienced in ten years.

Q. Then you really ascribe the damage to perils of the sea?

Objected to by Mr. Parkin as a conclusion.

A. Yes, sir. 463

Q. Don't you think that the perils of the sea that were encountered were fairly sufficient to account for the damage?

Objected to by Mr. Parkin.

A. I do.

Q. You can't stow so as to stand the ordinary weather that is expected at that season of the year? A. No, sir.

Q. And the fact that so much of the molasses went away showed that the appliances of the ship were sufficient for ordinary drainage? A. Ordinary drainage would not have affected her cargo.

Q. Simply that the drainage became extraordinary, 464 owing to breakage because of sea perils, was how the damage arose, wasn't it? A. Yes, sir.

REDIRECT by Mr. Black:

Q. When the vessel was cleaned up for the purpose of taking in cargo, did you have anything to do with looking into her bilges or examining the situation of her pipes or pumping arrangements? A. No, sir; we don't have anything to do with that.

Q. Whom do you mean by "we"? A. Pursers.

Q. Whose duty is it to look after the condition of the bilges on the steamer?

Objected to by Mr. Kirlin. 465

A. The master and officers.

Q. Do you, as a matter of practice, ever pay any attention to the bilges on a vessel on which you are supercargo with a charter? A. No, sir.

Q. Are those bilges covered over or open to inspection, so you can glance at and see them? A. They are covered generally with a loose plank that is easily removed.

Q. Did you take that plank up so as to examine the condition of the bilges on this vessel? A. No, sir.

466 Q. Is it any part of your duty to do so? A. No, sir.

Q. Did you make any examination of the scuppers to see if they were clear?

Objected to by Mr. Kirlin.

A. No, sir.

Q. Is it any part of your duty to do so? A. No, sir.

Q. Whose duty is it to keep the scuppers open so as to carry off any water or drainage?

Objected to by Mr. Kirlin.

A. The captain and officers.

467 Q. Did you obtain any information from the offiers of the ship as to the location of any of the scuppers, or whether the vessel had any scuppers or not?

Objected to by Mr. Kirlin.

A. Yes, sir.

Q. Who from? A. The captain and officers, at that time I spoke of about the between-decks.

Q. What did they say about scuppers? A. I asked them if the between decks—if there were scuppers at the after corners of number two deck to drain off any drainage of molasses and carry it into the bilges clear of cargo in the between decks—and they said they were clear; and the same of number

468 three.

Mr. Kirlin objects and moves to strike out the answer on the ground that the witness should ascertain those facts for himself.

Q. Did you know anything of the condition of the sluiceways in this vessel? A. No, sir.

Q. Is it any part of your duty to ascertain their condition?

Objected to by Mr. Kirlin.

A. No, sir.

Q. Did you know anything of the way of opening

or shutting those sluiceways—how it was arranged? 469
A. No, sir.

Q. Or as to whether they would open or shut? A. No, sir.

RECROSS by Mr. Parkin:

Q. I suppose, Mr. Maloney, if the sluiceways were clogged, the ordinary drainage would not have run off, would it? A. Oh, sluiceways into the pumps; no, sir.

Q. And if the bilges were clogged, it could not run off? A. No, sir.

Q. So you don't mean to say the clogging of the sluiceways and the clogging of the bilges was 470
due to the bad weather at all that you had in any way; if those were clogged in the first instance, it would not have made any difference about the weather, would it; the molasses could not have run off in any event then, could it? A. Well, the large amount of flooding possibly carried enough stuff there to choke the pump or the bilges—probably wouldn't have occurred if there hadn't been so much of a flow.

Q. Whatever stuff there was there was perhaps carried by the flooding, but if the sluices had been clear that flood would have been run off, wouldn't it? A. If the sluices had been clear it would have been run off. 471

By Mr. Black:

Q. Did you give any instructions to close any sluiceways or prevent the escape of the drainage of this cargo to anybody? A. No, sir.

Q. Is it proper or not to do such a thing? A. To what, sir?

Q. To close the escape of the drainage? A. No.

Q. It is not proper? A. No, sir.

472 By Mr. Kirlin:

Q. By what standard do you judge when you say it is not proper? A. I was going to say before the gentleman closed that I thought it was not proper.

Q. Now, if there had been a hole there big enough to have carried off all the drainage from No. 2 and No. 3 holds, there would have been about from seventy-five to one hundred and fifteen hogsheads of molasses lost, wouldn't there? A. I don't know, sir; I don't know how many hogsheads of molasses were lost; there may be; I don't know how much sugar was damaged.

Q. There was testimony that about ninety or more hogsheads of molasses were gathered up in the
473 hold. Do you think it would have been proper to have allowed all that to have flowed up and to have been pumped overboard? A. The question is whether it would damage other cargo; if it was going to damage other cargo to amount to more than that.

Q. You could not tell that when you were at sea, could you? A. Well, if you have sugar or other cargo in the lower tiers it is going to damage, I would say pump it out.

Q. Molasses won't melt sugar, will it? A. I don't know, sir.

Q. Molasses would not damage casks of sugar except on the outside, would it, according to your best judgment. A. It hadn't ought to damage it.

474 Q. Don't you think that the empty hogsheads in the lower hold are accounted for by the natural drainage of the sugar rather than accounted for by the drainage of the molasses that escaped from the between-decks? A. Empty sugar hogsheads?

Q. Yes. A. Drained out?

Q. Yes. Do you think the molasses melted the sugar and caused it to drain out? A. It may have washed it out, but I don't think it would melt it out.

Q. Well, if you found a large quantity of molasses, at sea, in the lower hold and you knew you

had sugar in the lower hold would you think it 475
desirable to allow all that molasses to escape for the sake of saving the sugar, or such damages as you understand molasses would give to sugar? A. Yes, sir.

Q. You would let the molasses go, would you? A. Yes, sir.

Q. Did you ask the engineer to make those holes in the between-decks? A. Yes, sir; in the bulk heads.

Q. Did you ask him to make any holes in the lower hold? A. No, sir; couldn't get in.

Q. Why not? A. Well, what he calls the sluice-door between the lower bunker and the hold was open, and he said there was no molasses to be seen 476
there.

Q. He told you it was stopped up hard, did he? A. It was blocked; there was nothing to be seen there.

Q. And the sluice-door was open? A. I don't know that it was open any more than he said he could see through it.

Q. He said it was open anyhow? A. He could see through; that's all I know.

Q. Didn't you say a moment ago he said it was open? A. It was open far enough for him to see through.

Q. And there was no molasses visible—didn't he tell you at the time that he had stuck a stick in 477
there and the sugar was hard on the other side? A. No, sir.

Q. You made no suggestions about cutting through the bulkhead in the lower hold aft? A. No, sir.

By Mr. Black:

Q. If he had let steam into that sluice, which would have run or got into the bilges, would that have been a way of softening and letting that stuff run out? A. Well, I don't see—if it had been

478 sugar or molasses it would, but if it was that bleaching powder I don't think it would.

Q. I don't remember whether or not I asked you how those four hundred and sixty-five hogsheads were distributed; do you remember how that was—what part of it went in lower hold, number two, and what anywhere else? A. It wasn't all in number two, but what proportion was in other hatches I can't say, but it was distributed in the lower part of the ship, some in number two, some in number three and some in number one.

Did you have any other molasses except this one lot on this voyage? A. No, sir.

479 By Mr. Kirlin:

Q. You made no suggestion about turning steam into number two hold? A. No, sir.

By Mr. Black:

Q. You are not a steam captain or steam engineer? A. No, sir.

Q. Have you commanded steam vessels? A. I have commanded this.

Q. Are you a master of steam vessels? A. No, sir.

480

UNITED STATES DISTRICT COURT, 481

SOUTHERN DISTRICT OF NEW YORK.

JOSÉ BREGARO

vs.

The Steamship "CENTURION."

THE AMERICAN SUGAR REFINING COMPANY 482

vs.

The "CENTURION."

DEPOSITIONS of claimant's witnesses, recalled May 22, 1893, examined under the stipulations previously made in these cases.

Present—Messrs. MACFARLAND & PARKIN, for the Libellants. 483
Mr. BLACK, for the New York & Porto Rico S. S. Co.
Mr. KIRLIN, for the Claimants.

ROBERT WATSON, recalled and sworn as a witness for the claimants, testifies:

By Mr. Kirlin:

Q. Your are the master of the *Centurion*, are you? A. Yes.

Q. You have been examined before in this case? A. Yes.

484 Q. Since you were examined, John W. Mallony, the supercargo and purser of the steamer on the voyage in question, has been examined. He testified at page 6 that he asked the captain if the between-decks was tight, as he wanted to stow molasses on them if tight, and if the drainings and pipes were clear, and that the captain thereupon called the mates and asked them the question, and then told him that the between-decks were tight. Is that so? A. No.

Q. What took place, if anything, between you and Mallony in Porto Rico about that? A. I said that I had only been captain of the ship a short time; I had never had any liquid cargo between-decks, therefore
485 I couldn't say whether they were tight or not.

Q. Did you know, as matter of fact, whether the between-decks were tight at that time? A. They are supposed to be tight, you know, but I couldn't really say at that time whether they were tight or not.

Q. You knew there were certain manholes for trimming grain in the between-decks? A. Yes, sir.

Q. Did you know whether they were tight or not? A. Yes, sir; they were tight.

Q. Had you examined them yourself? A. No; the officers examined them.

Q. All you know is from what the officers had
486 told you? A. Yes.

Q. Your mates? A. That is all.

Q. Mr. Mallony also testified, at pages 13 and 14, that he made the same inquiries with reference to No. 3 between-decks, and that you made the same answer? A. Yes.

Q. Was that true? A. Yes.

Q. You made the answer with the qualification that you have stated, did you?

Mr. Black objects as leading.

A. Yes.

Q. He further said that you told him, or that your

officers told him, that any drainings from the No. 3 between decks would be taken down by drain pipes in the forward end of the between-decks; was that true? A. No, sir; there is no drain pipes in the forward part of No. 3 hatch. 487

Q. Between decks? A. Between decks.

Q. Where is the drain pipe; how far back? A. It is about the afterpart of No. 3 hatch.

Q. How far? A. About forty feet, I think.

Q. About forty feet abaft the bulkhead? A. Yes.

Q. Is that the engine-room bulkhead in the between-decks? A. No; that is the engineer's bulkhead; the lodging bulkhead.

Q. Does it go clear across the between-decks? A. Just the between-decks. 488

Q. Is it iron? A. Iron, water-tight.

Q. What is it in the between-decks, between that bulkhead and the engine-room bulkhead? A. Engineers' berths.

Q. Anything else? A. No.

Q. How many berths? A. Three.

Q. On each side? A. No; two on the starboard side and one on the port side, and the mess room amidships.

Q. Does that bulkhead go clear down to the bottom of the ship or only in the between-decks, between the engineers' berths and the after between-decks? A. Yes, sir; it goes right down to the lower hold. 489

Q. Doesn't the hold go under the berths? A. No; the engine-room goes under the berths.

Q. Where is the engine-room bulkhead? A. The forepart of that—let me see now, I couldn't exactly say that the engine-room bulkhead is exactly from the between-decks to the lower hold.

Q. But it is forward, isn't it? A. Yes; forward of the lodgings.

Q. And therefore goes from down forward of the lodgings to the bottom? A. To the bottom.

Q. The division in the between-decks abaft the

490 sleeping rooms only goes in the between decks, don't it? A. That is all.

Q. So the hold goes under the berths? A. Yes; the hold goes under there, No. 3 hold. Their berths are over the forepart of No. 3 hold.

Q. Any doors or openings in that bulkhead leading from the between-decks into the engineers' berths? A. No, only from the deck; one side from the deck.

Q. Where were you when Mr. Mallony and the members of the crew went down the No. 2 hatchway into the No. 2 between decks to secure cargo at sea? A. On the bridge.

Q. Did you see what was done with the cover and
491 tarpaulin after the men went down? A. Yes.

Q. What was done with it? A. Battened down again.

Q. Was the cover put back on? A. Yes.

Q. And the tarpaulin put over it, and battoned down while the men were down below? A. Yes, sir; with lamps.

Q. Mr. Mallony testified that there was some water went down while he was down; is that true? A. I don't think there was any water; there may a little have gone down the time they were taking the covers off; that was the only time water could have gone down.

Q. Was there enough water went down to do any
492 damage? A. No.

Q. Mr. Mallony further testified (pp. 44 and 45), that he asked you and the officers if that between-decks was tight enough to stow liquid or molasses in so as not to leak down to dry cargo underneath, and that you said it was; is that true? A. No, sir; that is not correct.

Q. Did you see Mr. Mallony down in the between-decks during the time that the molasses was being stowed? A. No, sir; I didn't, sir; the only man that was in the between-decks when he was down was the second mate, and he was in the hospital the last time we was in port.

Q. Is he on board now? A. He is on board now. 493

Q. What is the size of these casks of molasses? A. They are about 4½ by 4, as near as I could tell. About the size of a hogshead I should think.

Q. What is the width of your ship on the floor of the lower hold? A. About 30 feet, I would say.

Q. What is the width of the main beam? A. Forty feet, I think.

Q. It would be more than 30, wouldn't it, in the bottom? A. No, she comes up, you know.

Q. Rounds up? A. Yes.

Q. What is the length of the shortest hold in the ship? A. I think about 40 odd feet or more.

Q. Do you know how many hogsheads can be stowed on the floor of the No. 2 hold? A. I think 494 about nine.

Q. Nine across? A. Yes.

Q. How many in length? A. I would say about twelve or fourteen; I would say fifteen. That is the largest hold we have got.

Q. That would be 135 on the ground tier? A. Yes, sir.

Q. How many could be stowed on the ground tier of Nos. 3 and 4? A. About 100, I think, or 97 or 98.

Q. When you took these casks of molasses in, was there cargo in all the lower holds? A. I think so, I wouldn't be positive, but I think so, when we took the first quantity of molasses in.

Q. Didn't you stop at Ponce the second time? A. 495 No, only once.

Q. You passed Ponce, didn't you, coming back? A. Yes.

Q. After you had discharged all the cargo? A. A. Yes, sir.

Q. But you didn't enter that port again? A. Never entered into port the second time; not that voyage.

Q. When are you going away with the *Centurion?* A. Three o'clock to-morrow.

496 CROSS-EXAMINED by Mr. Black:

What kind of a bulkhead is it between the after end of the engineers' stateroom and the No. 3 between decks? A. It is a bulkhead between-decks; a water-tight bulkhead.

Q. Wood or iron? A. Iron.

Q. Extending from the bottom of between-decks up to the main deck? A. Up to the main deck.

Q. Does not that same bulkhead extend below in the same line to the lower hold? A. No, sir.

Q. What kind of a bulkhead is it at the forward end of the engineers' stateroom? A. A bulkhead from the deck right down to the hold.

Q. From which deck? A. From the upper deck.

497 Q. What kind of a bulkhead is it? A. Iron bulkhead; it forms one of the squares of the engine-room.

Q. Are there any openings in the iron bulkhead which form the forward and after end of the engineers' stateroom? A. I think there is one; I think they go down there through that bulkhead; the opening into the engine-room.

Q. Is there any opening in the after bulkhead of that engineers' stateroom? A. None, sir; solid.

Q. You understand when I use the expression "opening" a passage or a hole? A. A doorway.

Q. Are there any holes between that bulkhead? A. No; just the doorway into the engine-room in that

498 bulkhead, I think, sir.

Q. Don't you know that there is a hole opening into a locker in the engineers' stateroom on the starboard side near the floor in that bulkhead? A. Yes.

Q. How long has that hole been there? A. Two years and a half.

Q. What was it put there for? A. I wasn't in the ship, but I can tell.

Q. What do you suppose it was put there for? A. I will tell you what it was done for. We have a lead pipe runs from the deck, a scupper, and it

goes into the hold to the outside of the ship; the 499
bend of it.

By Mr. Kirlin:

Q. It leads into the sea? A. It leads into the sea. That pipe is covered in with wood inside of the hold only; when we would be trying to get the water off the deck. That is just what I have heard. This is not fine for myself, because I didn't see it. Some one had been putting a sharp instrument into this lead pipe and caused a hole. She was bound then to Santos two years and a half ago, and they found some water going into the third and second engineer's berth, and they put these two holes to let the water out of the between decks. 500

Q. Where did they cut the two holes you mention? A. In the corner of the bulkhead near the bottom.

Q. To let the water out of No. 3 between-decks? A. Yes, sir.

Q. Into the engineers' stateroom so it would go down through that scupper? A. Yes, sir. I would rather you wouldn't take that from me, because the engineer was in the ship all the time.

Q. Was this hole on the starboard or port side? A. Starboard side

Q. And this lead pipe which you speak of, led from the level of the between-decks down into the lower hold and out through the side of the ship 501
below the water line? A. No, it is just a pipe to take the water from the deck. What we call a scupper.

Q. Then it led into the lower hold? A. No, that pipe leads into the bilges, the engine-room bilges.

Q. What pipes are you speaking of now? A. The lead pipe where these holes were cut.

Q. That lead into the bilges? A. Yes, sir.

By Mr. Kirlin:

Q. Which pipe do you mean by the bilge pipe? A. When they cut the hole the engineer said they put a pipe down into the third engineer's locker.

502 By Mr. Black:

Q. Where does the lead pipe that had a hole made in it—— A. It just catches the hole inside; it projects out the side of the ship.

Q. Between decks or below between-decks? A. No, on the top deck.

Q. The lead pipe which you spoke of leading to the edge of the main deck out to the water? A. The spar deck; it leads from the spar deck right out to the water.

Q. To take any wash from that spar deck away from that deck? A. Yes.

Q. And there is a hole in it to let the water down in the between-decks? A. Yes.

503 Q. When the engineer made the hole into the bulkhead, he went on and added a scupper pipe from there down to the bilge? A. No, it was already there. But I can't tell you all these things.

Q. You know the existence of those things? A. Yes; I know their existence, but I can't give you a true account of it because that is not my department at all.

Q. How many of those holes are there in that bulkhead? A. There is only two, I suppose; I didn't know how many there was until this morning.

Q. You have looked at them this morning? A. No, I didn't.

Q. How did you learn? A. The engineer said
504 there were two.

Q. Have you ever looked at them? A. No, never.

Q. Do you know of there being any holes in the bulkhead of No. 2 between decks? A. Yes.

Q. How many? A. One on each side.

Q. What kind of holes are those? A. Scupper holes. Perforated scuppers.

Q. In the bulkhead? A. No; in the deck.

Q. Did you know of any holes in the bulkhead of No. 2 bulkhead between-decks? A. Yes; there is a water-tight door there, a little square place, water tight.

Q. Do you know of any other holes there? A. 505
No; I do not know of any other.

Q. Did you hear of the engineer having cut a hole in the bulkhead? A. Yes.

Q. On which voyage did he cut that hole; on the voyage on which this molasses and sugar were damaged? A. No; you are in the lower hold now.

Q. I ask you, do you know of a hole being cut in the bulkhead of No. 2 between-decks? A. No; none between-decks, except this water-tight door, small door.

Q. Have you been in No. 2 between-decks? A. I have, but I didn't take notice of those things.

Q. Did you go to look if there were any such holes? A. No, sir; I did not. 506

Q. Have you heard that Mr. Mallony testified that there were such holes? A. No; I don't know anything about it.

Q. You haven't heard that? A. No.

Q. You have been told what Mr. Mallony did testify, haven't you? A. Yes.

Q. Has his testimony been read to you? A. Yes; it has.

Q. And you hadn't curiosity enough to go and see whether those holes are there? A. No; I haven't; that is not my department at all.

Q. Do you know what part is the lowest level of the No. 3 between decks? A. No; I can't say that either. 507

Q. Please look at the plan of your ship, noticing the sheer of the between-decks, and tell me what part appears on that plan to be the lowest part of No. 3 between-decks? A. I don't see any difference here in those parts.

Q. Hasn't your vessel got a sheer at the bow and a sheer at the stern, which makes the bow and the stern the highest? A. Not very much.

Q. Hasn't she got such sheer? A. I should say she has; but it is hardly perceptible; she is very straight.

Q. When did you have this conversation with Mr.

508 Mallony in which you told him that you hadn't been on the vessel very long, and didn't know so much about the condition? A. San Juan. That was when she was loaded outward, when I had that discussion.

Q. What was it Mr. Mallony said to you which called for that statement from you? A. Because he told me he was going to ship some molasses.

Q. And did he then ask you what the condition of the between-decks was? A. Yes; he asked me.

Q. Did you call up your officers and make any inquiry of them? A. No, sir.

Q. Didn't you tell him that you supposed those between-decks were tight? A. No, sir; I never told
509 him they were tight.

Q. You did suppose they were tight? A. Yes; I supposed they were tight.

Q. That was the condition they ought to be in, wasn't it? A. I don't know; that depends.

Q. So far as you had any knowledge of the vessel, she was in good condition, wasn't she? A. Yes.

Q. And you assumed that those between-decks were tight, didn't you? A. No; I wouldn't like to say that, because she has never had any fluid in the between-decks; she had always carried dry cargo.

Q. Didn't you, as a matter of fact, assume that those between-decks were tight? A. Of course.

Q. You didn't give Mr. Mallony to understand in
510 any wise that they were slack or likely to injure cargo underneath if he put molasses in? A. No, sir; never.

Q. And you didn't object to his putting molasses in the between-decks? A. Yes, sir; I did.

Q. To him? A. Yes.

Q. What did you say? A. I said if I had been stowing the ship, I shouldn't have put molasses in the between-decks.

Q. When did you say that? A. I said that to him.

Q. When? A. When we had the conversation.

Q. Was that after the cargo had been stowed? 511
A. Yes.

Q. Didn't you have a conversation with him before he put the molasses in? A. Yes, and I told him the same story.

Q. You gave him to understand then that the between decks was not fit to carry liquid cargo? A. I gave him to understand that that wasn't the proper way to stow cargo.

Q. No Did you give him to understand that the between decks were not in a condition to carry liquid cargo? A. I say I couldn't say; and I stick to it. I said once that I can't say whether it was tight or not.

Q. Didn't you tell him that you had carried grain 512
in this vessel? A. Yes, any amount of grain we carried.

Q. Didn't you tell him that the bunker hatches were caulked and tight? A. No.

Q. Didn't mention that at all? A. No.

Q. Didn't he make some inquiry about bunker hatches from you? A. Not from me.

Q. Didn't he, in your hearing, from anybody else? A. No.

Q. You are sure of that? A. I think I am sure.

Q. How sure are you? A. I am sure that I never heard him.

Q. How long a time did you tell him you had been captain of this vessel? A. Nine months. 513

Q. During that time what kind of cargo had you carried? A. General and grain cargoes.

Q. Between America and Europe? A. No.

Q. In the Mediterranean? A. No.

Q. Where? A. Took a general cargo from New York to Buenos Ayres.

Q. I understood you carried grain cargoes? A. I took a general cargo from New York to Buenos Ayres last August.

Q. Grain? A. No, general cargo.

Q. Did you carry grain? A. No, I carried grain from Buenos Ayres to England.

514 Q. In the between-decks as well as below? A. Yes, as full as ever she could stow them.

Q. Had you ever carried any liquid cargoes at all in that vessel? A. Never, she had never had a liquid cask in her.

Q. Within your knowledge? A. Within my knowledge and previous knowledge.

Q. What previous knowledge had you? A. Because I had belonged to the concern thirty years.

Q. Are you an owner in this ship anyway. A. No, sir.

Q. Or any other ship belonging to this concern? A. No, sir.

Q. You had been in their employ for thirty years?
515 A. Yes, sir.

Q. Weren't you informed by your engineer or any of your officers that on this voyage where you had this list, there had been molasses discovered in the between-decks and that to get it out a hole had been cut in the bulkhead of the between-decks? A. No, sir.

Q. Such a thing was not reported to you? A. No, sir. The two wooden plugs were knocked out.

Q. Where were the wooden plugs? A. In the starboard side of the bulkhead.

Q. Of which bulkhead? A. Of the between decks bulkhead.

A. Of which between-deck? A. No. 3 hold.

516 Q. I was asking you about the holes being cut in the bulkhead of the between-decks of No. 2 hold; had you not heard that? A. No, sir; there was no molasses found there.

Q. Wasn't it reported to you that to get that molasses out a hole had been cut in that bulkhead of No. 2? A. No.

Q. Never heard of that? A. I don't know anything about it.

Q. And you don't know to this day that there is such a hole? A. Yes, I do; this morning.

Q. Who did you learn it from? A. Learned it from the engineer.

Q. You didn't go and look at it yourself? A. 517
No.

By Mr. Kirlin:

Q. Have you been to the ship since then? A. No, sir.

Q. Have you been to the ship since you heard what Mr. Mallony testified to? A. No.

Q. Do you mean to say that all Mr. Mallony's testimony has been read to you? A. Yes.

Q. Didn't I only read to you short extracts? A. Yes, short extracts.

Q. You haven't read the whole deposition? A. No, only short extracts.

Q. You haven't heard it read, have you? A. No. 518

By Mr. Black:

Q. You arrived here on this vessel about the 6th of January last, didn't you? A. I arrived here on the 6th of January.

Q. And you made your entry at the Custom House and filed the manifest? A. Yes.

Q. Is that your signature to the manifest? A. Yes, that is my writing.

The manifest is marked "Respondent's Exhibit No. 1 for Identification" of this date.

Q. You swore to that, did you? A. Yes, sir.

Q. Do you remember what that cargo consisted 519
of? A. Yes.

Q. There was a great deal of cargo in bulk, wasn't there, on that voyage? A. No, not a great deal.

Q. How many tons, about? A. About 20, that is all.

Q. What was it? A. I couldn't tell the name of it; the Americans mix something with it; pirates or something.

Q. It is carbonate of barytes; you had two lots of that, didn't you? A. Yes, sir.

Q. One was about 48½ tons and the other about 25

520 tons, wasn't it? A. Yes, sir; I think so; put in separate holds.

Q. In the lower hold? A. Yes, sir.

Q. How much in the forward lower hold and how much in the after lower hold? A. I think 40 in No. 3 hold and 20 in No. 1 hold—turned out first class.

Q. Besides that you had 329 casks of ammonia alkali, didn't you? A. Yes.

Q. Where was that carried? A. In the lower holds.

Q. Which ones? A. No. 2, I think, and No. 1; I only had small parcels; there wasn't a thousand ton of it altogether.

521 Q. You had also the barytes in casks, hadn't you? A. Yes, sir.

Q. Where was that stowed? A. Between decks, I think, aft.

Q. And you had some 600 barrels of cement, didn't you? A. Yes.

Q. Where was that stowed? A. Part in the lower holds and part in the between-decks.

Q. Which lower hold? A. I don't think these questions have anything to do with the present.

Q. (Repeated.) A. It is seven or eight or six months ago.

Q. Tell me where that cement was stowed? A. Part between decks and part in the lower hold.

522 Q. Which lower hold? A. No. 4.

Q. Then you had some bleaching powder, didn't you? A. Yes.

Q. And two lots? A. Yes.

Q. Where was that stowed? A. No. 2 hold.

Q. Lower or between-decks? A. Lower hold; all that was stowed in the between-decks was cement and bricks.

CROSS-EXAMINED by Mr. Parkin:

Q. How many holds are there to the vessel? A. Four.

Q. How long is No. 1 lower hold? A. I don't 523
know the length.

Q. Do you know the depth of lower hold No. 1; how far it is from the floor of the hold to the between-decks approximately? A. In No. 2 and No. 1 she takes six heights in the hold of casks.

Q. That is of sugar? A. Yes.

Q. In No. 1? A. Yes, and No. 2; I will say 20 feet the lower holds.

Q. All of them? A. Yes.

Q. No. 4 also? A. No; No. 4 not so much as that—19.

Q. How about No. 3? A. No. 3 would be about 19½. She only takes four in Nos. 3 and 4, and she takes six in the other two. 524

Q. Are you sure she takes six? A. Yes; the tanks is lower. We can't tell exactly; in a sailing ship you could tell exactly, but as you go aft the ballast tanks rise higher; in the forward end they get lower.

Q. Do you know how much the vessel drew when she left Porto Rico? A. 18 feet six aft.

Q. How much forward? A. 14½ or 15 feet.

Q. The vessel has ribs, hasn't it? A. Yes; what they call frames.

Q. Do you know what the width of those frames is? A. I think they are about seven inches.

By Mr. Kirlin: 525

Q. You mean the web part as they go up the ship's sides, the frames they are flat and then they have a flange?

By Mr. Parkin:

Q. I mean the flange? A. About 3½ inches.

Q. No more than that? A. No more than that.

Q. Where does the sluiceway lead that comes through the bulkhead between No. 2 and the engine-room; does it lead into the tank or well? A. Not from the forepart of the ship.

526 Q. What does it lead into? A. The engine-room.

Q. What receives it there? A. The engine-room.

Q. Anything that comes through there? A. When it comes through there the engineer pumps it out.

Q. Onto the floor; isn't there a well there it runs into? A. I don't think there is a well there. There is a well in the after hold, but I don't think there is one there. But that is an engineer's question.

Q. If this sluice is open does anything that comes through it run right on to the floor of the engine-room, do you know? A. There is circulating pumps; every time the engine goes round keeps that place clear.

527 By Mr. MacFarland:

Q. What comes through will run on to the floor of the engine-room? A. Yes.

Q. And they depend upon the pumps to keep it clear? A. Yes; and the pumps are constantly working with the engines. But I would rather not answer those questions; simply I am not an engineer.

Q. The fact is that a lot of molasses casks that the stevedore had taken the responsibility, against your judgment of putting in between-decks, smashed to pieces? A. Yes; that is right.

Q. And consequently there flowed out of them a great many tons of molasses? A. Yes.

528 Q. And that molasses, in order to get out of between-decks, had to go somewhere? A. Yes.

Q. It tried to go through the decks, or else through the scupper holes? A. Yes.

Q. How much went through the scupper holes and how much got through the decks you don't know? A. There was nothing but bay rum went through the scupper holes.

Q. I am now trying to find out how that molasses would have got out of between-decks; it must have got out in one of those two ways, didn't it? A. Yes.

Q. It did get down below? A. Yes.

Q. And it flowed over to starboard and gave you a list? A. Yes; I know that, sir. 529

Q. When it got down there if there wasn't some hole open to let it flow out somewhere, it would have stayed there with the sugar, wouldn't it? A. Yes, sir.

Q. It seems it did stay with the sugar, didn't it? A. I think it did; yes, sir, or the settlings of it.

Q. It would rather stand to common sense that there wasn't any place for it to run out? A. Yes.

Q. Perhaps they thought they would save the molasses? A. It was like to the cement that I brought from England, it got hard. 530

Q. Perhaps they thought it was better to save the molasses there? A. Yes.

Q. That was a matter of judgment; whatever molasses went down the scuppers of course went into this bilge? A. Yes.

Q. The bilge is a sort of canal running along the ship? A. Yes; it runs away from the tanks.

Q. About how wide is it? A. I should say 18 inches.

Q. And about how high? A. Just the height of—about 17½ or 20 inches; I would say two feet.

Q. So that is a thing that would hold a good deal of liquid? A. Yes. 531

Q. And carry it off if there was any place to carry it off? A. Yes.

Q. The purpose of the bilge is to receive what water may come through the scuppers and carry it out where the pumps can receive it and take it it away? A. Yes.

Q. If anything should obstruct the entrance through which that water ought to pass out of the bilge, I suppose you have got some way of removing the obstruction, haven't you? A. I don't know.

Q. The engineer ought to have some way, oughtn't he? A. As I have talked about the cement, you

532 know the settlings, there is a settling of molasses, and it becomes like sugar at the bottom, it settles in the bilges you know. We clean the holes out through the frames.

Q. You have got a hole out from the bilge through the bulkhead, haven't you? A. No, sir; these holes from those bilges run through the bulkhead about the size of every rib of the ship; it runs like this, right from the fore end of the ship, or whatever part of the ship it is placed in, and these holes, the ribs are so many feet apart, and every rib has a shoulder in the bottom. These holes are through the shoulders of those ribs, and those go right into the engine-room.

533 Q. The ribs come up into the bilges? A. Yes, of course.

Q. And through each rib there is a hole? A. There is a piece of plate iron laid on from this part of the rib to the lower part, like a triangular piece.

Q. That is a triangular hole? A. No, it is like a half diamond, blazed in, warped in the rib when it is cast, and these hole go right through and the water has a fair play to the engines.

Q. How wide is that hole? A. About 2½.

Q. In the ribs which are in the engine-room, there is a chain, isn't there, which can be worked backwards and forwards to keep them clean? A. No.

Q. Isn't there some means of keeping them clean?

534 A. No.

Q. How are those kept clean? A. Everything becomes useful in the course of time. That chain we put in ourselves to keep it clear.

Q. And that runs through the holes in the ribs in the engine-room? A. No; just through the holes when it gets blocked up.

By Mr. Kirlin:

Q. When did you put it in? A. After we got here to get it out.

Q. Ordinarily, Mr. MacFarland means? A. When the thing chokes up, you know, we haven't only

molasses, we have mats, all sorts of rubbish in the ship, and sometimes a little bit of straw or anything will stop the pipe of the engine room bulkhead; it is perforated; when it me ets the engineer's bulkhead it is a large box and a perforated top on it, and they try to keep all dirt and things out of it. It is like a pepper box lid. 535

By Mr. Parkin:

Q. When these get choked up how do you clean them out? A. Have to clean them out the best way we can.

Q. How do you do it? A. Sometimes with a chain and sometimes with the hand. 536

By Mr. MacFarland:

Q. Sometimes with steam? A. The steam won't clean; the steam is only to draw the water out.

Q. If one of those bilges should get choked up, couldn't you inject steam in? A. No.

Q. Or sea water? A. No, couldn't inject anything at all.

By Parkin:

Q. What is this chain you speak of which you put there; where is that chain? A. It was placed by the mate.

Q. Where is it placed? A. Each side of the bulkhead. 537

Q. Extending the whole distance forward? A. Oh, bless you, no.

Q. Where does it extend? A. Now you are asking me questions—I have never seen the chain; I have only heard tell of it. It only goes through this hole where the water runs to keep it clear.

Q. The whole length of the channel? A. No, it is a small place.

Q. Through the bulkhead? A. Yes, that is all.

Q. When was that placed there? A. To try to get the bilges clear.

538 By Mr. Kirlin:

Q. Is it there now? A. No, I don't think it. When we are washing holds out we use it so the water won't——

Q. You can't use it when the hold is full of cargo? A. No.

Q. Because there is nobody to pull it the other way? A. No, you see when the chain is at the other side of the bulkhead and there is cargo in, we can't pull it; we can only use it when the cargo is out that is all.

By Mr. MacFarland:

539 Q. You have got this bilge and ribs and holes in them, and what the bilge contains runs through the holes in those ribs? A. Yes.

Q. Suppose one of the holes in this rib should become obstructed so it wouldn't let the water through, or anything else, what would happen? A. It has got to lay there.

Q. You couldn't do anything to get it out? A. No.

Q. No way in the world of relieving that bilge? A. No; the water could come on to the ceiling.

Q. So all the water would stay there? A. Stand between each rib two feet deep wherever it was.

Q. If the hole in that rib was stopped? A. Yes.

540 Q. The water would rise how high; to the top of the deck? A. No; it would only rise to the top of that and then we would take it out.

By Mr. Kirlin:

Q. How high is that? A. Two feet.

Q. And then it would flow on over? A. Yes, sir.

By Mr. MacFarland:

Q. Flow to the bilge? A. Yes, sir.

Q. Where would it flow? A. On top of the tanks.

Q. When it got there you would pump it out? A. Yes.

Q. How would you get the pump to it? A. I can't 541
answer those questions; no; I don't intend to answer any more engineer's questions; positively I don't.

Q. I think we may end up this way. We have got 40 or 50 or more tons of molasses in the lower hold, and we don't know how it got there, and we don't know why it didn't get out; that is about it? A. That is about it.

By Mr. Kirlin:

Q. This manifest was not drawn to your attention on your previous examination? A. No.

Q. You were asked no questions where the Shiels cargo was stowed, except the sugar and the molasses? A. No. 542

Q. Do you recollect clearly where each part of this cargo was stowed at this time? A. No; I said I didn't know.

Q. You don't know; you don't remember? A. I never knew; I looked down the hold and see casks go down, and that is all I know.

Q. I am asking about the other cargo. The barytes and casks of ammonia, &c.; you don't remember, do you?

Mr. Black objects as leading.

A. No.

Q. You can't remember at this date where each lot of cargo was stowed? 543

Mr. Black reads from the manifest of the voyage from Sheils to New York, September 17, 1892, arriving in New York January 7, 1893, as follows:

"25 tons Carbonate of Barytes in bulk,
329 casks ammonia alkali,
50 " Carbonate of Barytes,
50,000 square fire bricks,
51 casks Refined Red Lead,
100 " Star Antimony,
1,169 " Crystal Soda,
40 " Carbonate of Barytes,

544 48 Bales of skins,
39 bags of skin waste,
560 casks Portland cement,
58½ tons carbonate of Barytes in bulk,
600 casks Yarrow cement,
9 " Bleaching Powder,
26 " " "

WILLIAM J. MURRAY, recalled for the claimants:

By Mr. Kirlin:

Q. You have been examined before in this case, haven't you? A. Yes, sir.

Q. Have you measured the size of the sluices leading
545 through the bulkhead between No. 2 hold and the engine-room? A. Yes.

Q. What is the size of the sluice? A. Two and a half inches.

Q. What kind of an appliance is there for opening and closing that sluiceway? A. None; it is opened the same as an ordinary cock tap.

Q. Do you know the height of the pieces of iron that are attached to the frames in the bilges, the ribs extending from the side of the tank to the ship's side? A. I couldn't tell you to an inch or two; I never measured it.

By Mr. MacFarland:

546 Q. Are they as high as the top of the tank? A. They might be within an inch or an inch and a half.

Q. That would be about how high—how many feet and inches? A. I think they would be about two feet, to look at it; I never measured it.

By Mr. Kirlin:

Q. How far are these beams apart? A. I think they would be about two feet apart.

Q. So there would be a pocket every two feet? A. Yes, I think they run every frame.

Q. With holes? A. Yes, sir.

Q. What is the size of the holes? A. Three or 547
four inches; some of them perhaps more.

Q. They are larger than the sluice holes, are they? A. Larger than the sluice holes.

Q. If those became blocked would water run over the top of them before it ran over the top of the tank? A. Yes, it would.

Q. It would run from one to the other on towards the engine-room? A. Yes, I think they would be about an inch or an inch and a half below the top of the tank.

Q. What is the distance from the bottom of the sluiceway to the bottom of the bilge where it goes through the bulkhead? A. It might be six inches.

Q. What is the reason it is that height above the 548
skin of the ship? A. My idea of it is, if there is any solid matter goes through, it goes below the sluice and lies there. I don't know whether I would be correct in that or not. So if there is any solid substance gets in it don't get in the sluice to block it up.

Q. Is your ship web framed? A. Yes.

Q. The web of the frame is riveted on to the bulkhead just where the sluce is, isn't it? A. I should think there would be a frame underneath the bulkhead; I don't suppose the bulkhead is carried right down; it might be, because where that sluice is it would be the bulkhead of the tank as well.

549

Q. Isn't there a consideration of strength in the location of this hole; isn't it kept away from the side of the ship on account of the thick part of the beam being just there; isn't there a consideration of strength that enters into the location of that hole? A. No; I don't think so; there might be.

By Mr. MacFarland:

Q. How far is the hole that leads from the bilge into the engine-room from the side of the ship? A. If you take from the side of the ship close to the

550 bottom where the hole is it would only be about half or quarter of an inch.

Q. It is pretty close up to the side of the ship? A. Yes, because the ship sweeps in.

By Mr. Kirlin:

Q. Mr. Maloney, the supercargo, has been examined since you were previously examined; he testified that you cut some holes in the between-decks in order to allow molasses to escape; is that so, in the bulkhead leading from No. 2 between-decks into the bunker? A. I knocked two rivets out for Mr. Maloney in the bulkhead; Mr. Maloney asked me to do it.

551 Q. He also stated that you knocked some plugs out of the bulkhead between the third engineer's room and the after between-decks? A. Yes.

Q. And that the molasses then came into the locker in that room and went down through the scupper? A. Yes.

Q. Is that true? A. Yes, that is true.

Q. Are there any holes located on the port side in that bilge? A. No.

Q. Do you know how those holes came to be there? A. Yes.

Q. Please explain that? A. I put them there myself.

Q. When was it; how did you come to put them
552 there? A. It will be two years I guess now.

Q. What did you put them there for in the first place? A. There was some water got down from the deck in the between-decks on a voyage we were on down to the Brazils; general cargo we had in; I found the water was siding through the bulkhead in the third engineer's room—it used to be the second's then, but now it is the third's, and I reported it to them on deck. We had very bad weather, it was in January, a bad time of the year, and we were very deep too; I reported to the officers; as soon as it was fine weather, I think about eighteen or twenty hours after that the weather moderated and we got

the hatches off. There was about a foot of water 553
aft in the between-decks in number three; general cargo and merchandise and straw; it stopped everything up.

Q. Stopped the scuppers? A. Stopped everything up; they didn't know what to do; I suggested to them to make a hole in there, because there was a scupper in the third's berth, and there was one in mine, and that scupper is for any water getting into our compartment, our berths, to run away. It is not for the hold at all; it has no connection with the hold. And that is the way the holes was cut, and after I got it out, I plugged them up, and the plugs have never been out since. If the plugs hadn't been out and Mr. Maloney had asked me, I would 554
have knocked the holes in, or I would knock the rivets out. It has not hurt the ship any.

Q. You say there are no holes on the port side in the same relative place? A. No; all on the starboard.

Q. Are the scuppers in your cabin? A. Scuppers in mine and the third engineer's, and I think there is one in the captain's and one in the spare berth.

Q. There is no connection between any of the rooms and the hold, except these two holes that you have referred to? A. The pipe runs right down there along the ship's skin, right into the bilge.

Q. What I mean is, there is no connection between the between-decks and any of those rooms, 555
so as to allow drainage? A. Not for water to run out.

Q. You have scupper pipes for the purpose of relieving the between-decks? A. There is a scupper pipe on each side of the between-decks.

Q. How far back from that bulkhead? A. I am sure I couldn't tell you; it is between No. 3 and 4 hatch.

Q. It is abaft of No. 3 hatchway? A. Between 3 and 4 hatch just about the rigging, the mainmast; one on each side; that is in No. 3 and 4 hold; the

556 between-decks hold is all in one. It is only the lower hold where there is a bulkhead.

Q. Were the sluices in the bulkhead between the No. 2 hold and the engine-room compartment open on the first, second or third days previous to this heavy storm, when the steamer took a list. A. Yes.

Q. Did anything come out? A. There might be a little mite drainings of sugar coming out.

Q. Then was it shut as soon as whatever was coming out stopped coming out? A. Yes.

By Mr. MacFarland:

Q. Do I understand rightly, that then they were
557 shut? A. They were shut and nothing come out.

Q. After the ship took the list they were shut? A. Yes, sir.

By Mr. Kirlin:

Q. What was the reason for shutting them after the drainings had ceased flowing? A. For fear anything happens in the hold; any holes made in the hold or in the engine room and water gets back during the time of the sounding—they are sounded every morning at 6 o'clock and every night, and if there is two inches of water showing, then it is put on the board and I pump it out, and as soon as I pump it out I rub it off the board.

558 Q. You mean by pumping it out, that you open the sluice until all the water runs out? A. Yes.

Q. And then it is closed? A. Yes.

Q. Where is the pump that pumps it out? A. In the engine-room.

Q. Is that going all the time or not? A. Going all the time the engine is going.

Q. Attached to the main engine? A. Attached to the main engine.

Q. Is that of sufficient capacity to throw out anything that can come through that sluice? A. Yes, there is two pumps, you know.

Q. Both going? A. Always working.

Q. What happened on the morning after the ship took the big list with reference to the sluice down in the engine-room when you opened the sluice? A. After the ship took the list there was a little stuff come out, a very little; we opened the sluices again and there was very little come out. 559

Q. What did you do to find out why it didn't come out? A. Put a rod up.

Q. What did you find? A. Sugar, I should think.

Q. Hard substance? A. Hard substance.

Q. In the bilge? A. In the bilge.

Q. After that did anything come out of the sluice when it was open at any time? A. Nothing come out then.

Q. Until you got to New York? A. Until we got to New York. 560

Q. Did you open and try it again? A. Yes.

Q. Was the sluice through the bulkhead between the engine-room and No. 3 hold tried in the same way? A. Yes.

Q. What was the result there? A. There was nothing comes out of that; it comes out in the after end.

Q. Did anything come out of this sluiceway that you have spoken of at all on the voyage? A. No.

Q. Was it open at all? A. Yes, it was open; nothing comes out there.

Q. Why? A. Because the ship is by the stern; it all lays aft. 561

Q. Then I will direct your attention to the after sluice, where does that lead to; the after well? A. Yes, sir.

Q. Did anything come out of that when that was open? A. A little.

Q. When was that opened? A. I used to open it every four hours; we opened that ourselves down below.

Q. Did you allow all the molasses to come out that was in? A. No.

Q. Why? A. Because they said they saved the molasses for the sugar people.

562 Q. Who said so? A. The people that was aboard that belonged to the cargo.

Q Mr. Maloney? A. Yes.

Q. You saw there was no water? A. No water.

By Mr. MacFarland:

Q. Your object was to save the molasses, certainly? A. Yes.

Q. Acting under the authority of the supercargo? A. Yes.

Q. Therefore, you wouldn't have let the molasses run away and go overboard? A. No; as long as the molasses is clear of all water or anything, it is all pure molasses.

563 Q. You left it with the sugar where it was? A. Yes.

By Mr. Kirlin:

Q. After you got to New York and the vessel got on even keel, so that the drainings in the bilge could go to the bulkhead between the engine-room and No. 3, did you start to pump at all during the discharge of the cargo? A. Yes.

Q. And opened that sluice? A. There was some of the sluices open, I couldn't say which ones, in the engine-room. I couldn't exactly say which one it was now, and there was a little molasses coming out, and there was a gentleman came and stopped
564 me; I was looking over the ship's side at the time.

Q. Who was that gentleman? A. I took him to be the supercargo man.

Q. Have you had him with you since? A. The gentleman was with us last voyage.

Q. What is his name? A. Rafford.

Q. He went with you on the last voyage as supercargo? A. Yes; I didn't know who he was then.

Q. Did he stop you from pumping the molasses out? A. Yes, sir; that was at the sugar works.

By Mr. MacFarland: 565

Q. That was after the vessel got here? A. Yes.

By Mr. Kirlin:

Q. How long did Mr. Maloney stay by the ship after her arrival? A. I don't think he was there over a day, if he was there a day.

Q. Did this Mr. Rafford succeed him? A. Yes, sir.

Q. Has he been with the ship since? A. No, sir.

Q. Just one voyage? A. Just one voyage.

Q. When you examined the sluices through the bulkhead between the engine-room and No. 2 hold before the steamer took the list, and when you say 566
very little liquid came through, was there any means by which you could tell whether the bilge was full or not at that time? A. Yes, sir.

Q. What? A. When I open the sluice, if I see nothing comes through I generally put the lamp down.

Q. You mean the lamp you have in your hand? A. Yes, hand lamp, if I am sure there is no gas there; if I have any combustible cargo I don't do it.

Q. Did you put your lamp down? A. Put the lamp down, and working along the passage, if there is a draft of wind, it blows the lamp out.

Q. On the days previous to the steamer getting a list, when you put your lamp down there, was there 567
any draft coming through? A. Yes, sir.

Q. Did you put your lamp down there after the list? A. No, sir.

Q. Did any draft come through? A. No; I had to shove the rod up; it took strength to shove it up, and when it came out it was all covered with pure sugar.

Q. Do you know whether the manholes in No 2 between-decks were all caulked or not? A. No, I cannot say anything about that; I know there is two of them that I know is caulked; I made the

568 joints myself and have never been disturbed. They have been that way this eighteen months.

Q. How many of them are there on each side in the after between-decks of No. 2 abaft the hatchway? A. Only one, I think; one on each side.

Q. Abaft the hatchway? A. I think so.

Q. And those two you know of your own knowledge were caulked? A. Not caulked; there is two bolts and a weeze put on and iron plates screwed down.

Q. Was anything put underneath it to keep fluid from going through? A. A piece of spun yarn and white lead; then there is two small hatches abaft that.

569 Q. Those have combings around? A. Yes, and they are caulked.

Q. Did you see Maloney in the between-decks during the loading? A. I wasn't looking about much, but I very often used to see Maloney down between-decks and down in the lower holds.

Q. Did you see him in No. 2 and No. 3 between-decks? A. I have seen him all over the ship.

Q. While the loading was going on? A. Both the loading and discharging; seen him all over; never paid any attention to him, what he was doing; seen him going down; didn't know whether he was looking after the cargo or what he was doing.

570 By Mr. MacFarland:

Q. When you testified in this case before, I notice that you said that the sluiceway from No. 2 was opened the second or third day out; that was right, was it? A. Just as near as I can judge.

Q. Do you know whether it was the second or third, quite? A. I couldn't tell to a day.

Q. I suppose it may have been anywhere between the first and fourth day? A. I couldn't tell you to a day, because opening the sluice, I generally just put down if the bilges are dry; I generally put down "bilges dry," but if the tank is mentioned on the

board to pump out, I put down the number of the tank I pump out. 571

Q. You have no log that tells you anything about it? A. No, sir; not about the bilges.

By Mr. Kirlin:

Q. Where is your scupper pipe in No. 2 between-decks, where from the bulkheads? A. I should think perhaps two or three inches from where those holes are cut from the stokehole bulkhead in No. 2.

Q. Those are close up to the side of the ship, are they? A. Yes.

Q. In the No. 3 between-decks? A. They are be-between Nos. 3 and 4 hatch, I should think, as near about the centre of the two hatches as I could say; I never paid much attention to that; I think they are about that position somewhere; they will be about two or two and a half inches. 572

CROSS-EXAMINATION by Mr. Black:

Q. Do you mean to say that the sluices were not open on the first day out? A. I couldn't say if they weren't opened, you know.

Q. Do you mean to say they were not open on the second day? A. I couldn't say that; I couldn't tell to a day when they were open.

Q. Have you no knowledge about the fact, whether they were or not? A. I never pay much attention to the sluices, unless they tell me there is water in them. 573

Q. Then it was not one of the proper and usual things for you to open them every day? A. No, sir.

Q. And you don't know that they were open the third day? A. I couldn't say whether they were or not.

Q. When they were open the first time were you present? A. I was down below at the time—not the time they were opened, but I was down below looking at them after they were opened.

574 Q. Were they opened when you were present? A No.

Q. How long after they were open were you down there? A. About half an hour.

Q. When you saw them they were running a little? A. A very little.

Q. You don't know how much came out at the beginning, whether any or not? A They would not be much coming out at the beginning, because it was not running through the other hole in the other limber.

Q. What do you mean by that? A. There was very little water in the limber next to the sluice in my compartment, so there had not much come out.

575 Q. How many hours was it after the ship took this sudden lurch which occurred on the night of the 22d of February, as appears by the log, before you ran this rod through that starboard sluice with force, as you say, and found it obstructed with the substance that had accumulated there? A. I was at it in the morning about 9 o'clock when I was down there.

Q. Of what day? A. The fourth or fifth day I should think; I was down there the fourth.

Q. Do you mean it was the day following the night of the lurch, or a day following that day? A. The morning following the lurch.

Q. The lurch occurred at 6:30 P. M. on the 22d? A. Early part of the night when we took the list.

576 Q. And you think you tried this sluice with the rod the morning of the 23d about 9 A. M.? A. Yes, I know I tried it when I went on watch, and I come on watch at 8 o'clock.

Q. To your knowledge, how many hours had intervened between the last opening of the sluice prior to finding it obstructed? A. I couldn't say.

Q. It might have been three days, mightn't it? A. No, it would not be that long, I don't think.

Q. Two days? A. It might be two days.

Q. The molasses which was found in the well at

the after end of the ship flowed from No. 4 and No. 3, did it, between-decks? A. Yes. 577

Q. You found no sugar in that molasses? A. That molasses in the between decks has no connection; it got stopped in the between decks; they were stopped up.

Q. Which scuppers are you speaking of now? A. The scuppers of the between-decks in Nos. 3 and 4, where they got stopped up with molasses getting thick, it wouldn't run.

Q. But you did find molasses flowing when you opened the sluiceway of Nos. 3 and 4? A. Yes.

Q. And you said that you stopped as soon as you found it was molasses? A. Yes.

Q. But it was thick with sugar like the sub- 578
stance you found in No. 2? A. No.

Q. That molasses which flowed from No. 3 and No. 4 some of it you pumped overboard? A. A little, very little.

Q. It didn't flow very freely, did it, into the well? A. Yes.

Q. You stopped its flow? A. They told me they wanted to keep all the molasses in.

Q. Who told you that? A. Mr. Maloney said so.

Q. Personally to you? A. Yes.

Q. When did he say so? A. On the passage home.

Q. At what time on the passage? A. I couldn't tell you; I think before the damage occurred. 579

Q. Before the ship got this heavy list? A. Yes.

Q. Before this great accumulation of molasses? A. Yes.

Q. It was Mr. Maloney who requested you to knock out the rivets in No. 2 bulkhead, was it? A. He asked me if I would do it.

Q. Did you asked the captain's permission to do it? A. I didn't ask it; I told Mr. Maloney to ask it.

Q. You did knock them out? A. Yes, with the permission of the captain.

580 Q. Conveyed to you by whom? A. By Mr. Maloney.

Q. Mr. Maloney told you that he had the captain's permission? A. Yes, sir.

Q. How long after he first spoke to you about it did he tell you that? A. A little before dinner when he asked me, perhaps an hour or an hour and a half.

Q. That was the very day the vessel got the list? A. It was the next day; she got the list in the night.

Q. The 23d he asked you to knock this hole in? A. Yes, sir; I think so.

Q. It was after dinner you did it? A. Yes, sir; it
581 was before dinner he asked me.

Q. In the meantime had you seen the captain yourself? A. Yes, sir.

Q. Did you verify Mr. Maloney's statement that you had the captain's permission to do it? A. Yes, sir.

Q. Who told you? A. The captain.

Q. When? A. After dinner.

Q. How long after? A. Perhaps half an hour.

Q. The same day? A. Yes, sir.

Q. He told you that Mr. Maloney had asked permission, and that he had given it? A. Yes, sir.

Q. What was the name of the captain who told you that? A. Captain Watson.

582 Q. Where was he when he told you that? A. I don't know whether he was on deck or down below at the time.

Q. How was it you came to speak to him about whether Mr. Maloney had asked his permission or not? A. I thought I would go and see whether he had got permission.

Q. You didn't entirely rely on what Mr. Maloney had said? A. No.

Q. You thought it was better for you as an officer to ask your superior? A. Yes, sir.

Q. Had you done it at that time? A. I had made the hole at that time.

Q. One or two? A. One. 583

Q. Did you knock another one afterward? A. Yes, sir.

Q. The first one was by knocking out a rivet? A. Yes.

Q. How large a hole did that make? A. Three-quarters of an inch.

Q. How did you get the second hole? A. Rivet.

Q. Did you cut it with a chisel? A. No.

Q. You cut off the rivet head and that was the same size? A. Yes, sir.

Q. Did the molasses come through? A. Yes, sir.

Q. Where did it go to? A. Coal bunker.

Q. Was the coal in that bunker? A. Yes, sir.

Q. Between-decks bunker? A. Yes, sir. 584

Q. How did you reach the place where you cut the rivet off if there was coal in that bunker. A. The bunker was fifty or sixty feet long.

Q. That bunker was clear? A. Yes, sir.

Q. That molasses flowed aft? A. Yes, among the coal.

Q. Didn't it flow into the lower hold among the coal? A. Yes, it flowed over the coamings of the between-deck bunker on to the coal into the lower bunker.

Q. What became of the molasses? A. It was destroyed.

Q. How much molasses flowed through that? A. I couldn't say. 585

Q. Is there an opening like a porthole in that between-deck bunker separating the No. 2 between-decks from the coal bunker through which you can look into the between-decks? A. There is an iron door on.

Q. Is it an actual door that you can go through, or is it like a hole? A. It is a door two foot square.

Q. Did you look into that between-decks? A. I took the door off so Mr. Maloney could see.

Q. Did you look in? A. Yes.

Q. Did you see molasses in there? A. Yes.

Q. You had a lamp, did you? A. Yes.

586 Q. And you could see the molasses in there? A. Yes, sir.

Q. How high did it appear to you to be in that between-decks? A. In the ship's side I would think it would be about eight inches to a foot.

Q. At the after end against the bulkhead? A. At the ship's side.

Q. And coming right up against the bulkhead? A. Yes, sir.

Q. How deep at the bulkhead? A. It was close to the bulkhead where I saw it; I couldn't see it for the hogsheads forward, the hogsheads was close up against this door.

Q. Is the level of the coal bunker in the between-
587 decks the same level as the No. 2 between decks? A. Yes.

Q. How close down to the floor of that bunker were these rivets knocked out to make holes? A. Might be 2½ inches; there is an angle bar——

Q. How long a time did the molasses continue pouring out through those holes? A. Very near till we got home, I should think, till we did get home.

Q. A pretty steady stream of it all the time? A. A full hole all the time.

Q. That is, the molasses filled the hole all the time? A. Yes, sir.

Q. And poured out all the time? A. Yes, sir; I know I stopped two nights—up and looked after it
588 myself.

Q. To keep them clear? A. Yes, I did that to oblige Mr. Maloney, and to save Mr. Maloney.

Q. You are a good friend of Mr. Maloney's? A. I am no friend to Mr. Maloney; I like to do a good turn to any one if I can do it; Mr. Maloney is a stranger to me.

Q. When did you first hear about Mr. Maloney's testimony in this case, what he testified to; to day, yesterday, or when? A. I haven't heard anything of Mr. Maloney's testimony.

Q. Haven't you heard the story he told in his

deposition about this voyage and cutting these holes? A. Yes, I heard that on board the ship. 589

Q. Who told you about it? A. The first one told me about it was the stevedore come and asked me about the holes, to show him where the holes were.

Q. And you did, did you? A. Yes.

Q. Did you try that sluice in the forward bulkhead of the lower hold more than once, No. 2? A. Yes.

Q. How often? A. I think I tried it four or five times.

Q. In the same way? A. Same way.

Q. With the same length of rod? A. Same rod.

Q. Never tried to lengthen the rod? A. No.

Q. Never tried to push further forward in the bilges? A. No. 590

Q. You had the same result every time? A. The same result every time.

Q. How long a rod was that? A. About four feet.

Q. An iron rod? A. A piece of copper tubing. You want it copper tubing on account of being soft to bend.

Q. How much diameter had it? A. Half inch or three-eighths copper tubing.

Q. And it came back all sticky, didn't it? A. Yes, all solid.

Q. Was the outside of it coated and sticky? A. Yes, sir.

Q. Was it a feeling of stickiness to your fingers? 591
A. Yes.

Q. Did you taste it? A. No, I didn't taste it.

By Mr. Kirlin:

Q. It looked like sugar?

Objected to.

A. Yes, you could see it was sugar; it was the color of sugar.

592 Mr. Black:

Q. When was it that Mr. Maloney went with you in the stateroom of the third engineer to look for these other holes? A. I think it was the same day as we did the forward holes.

Q. Before or after? A. It was after, I think.

Q. In the same afternoon? A. I think it was in the afternoon, I think it was the same day. It was after I did the others.

Q. Where the holes the same size in that bulkhead? A. Yes.

Q. Two rivet holes? A. Two rivet holes.

Q. And about the same position from the deck? A. Yes.

593 Q. And those were plugged? A. Yes.

Q. And you withdrew those plugs? A. Yes.

Q. And then the molasses flowed? A. Yes.

Q. And continued to flow for how long? A. A night or a day before we got here.

Q. You didn't think that was saving the molasses, did you? A. That was going down into the limbers and we weren't pumping it out.

Q. What went down into the coal bunkers wasn't very much saved, was it? A. No.

Q. You spoke of a scupper as being on the forward side of the bulkhead between the coal bunkers and No. 2? A. Yes.

Q. That would bring it into No. 2 hold? A. Yes.

594 Q. Close up against the bulkhead? A. Two or three inches away from it.

Q. How large was the diameter of that scupper? A. About 2 or $2\frac{1}{2}$ inches.

Q. Did it have a strainer on it? A. Yes.

Q. Why didn't that molasses go down that scupper? A. Because the sediment of the molasses stopped it.

Q. It flowed through the holes that you made? A. Yes; those holes was larger than them, though.

Q. Couldn't you reach that scupper so as to open those holes? A. No.

Q. How large were the holes in that scupper? A. They would be about perhaps an eighth of an inch. They are not round holes, just like a long grating. 595

Q. They are not holes; it is a series of parallel lines? A. Just like a grating about an eighth of an inch I suppose.

Q. A series of parallel lines about an eighth of an inch apart? A. Yes, and that is a fixture too, you can't get it off.

Q. You could punch it through if you wated to? A. Yes.

Q. Does each one have a similar grid on it? A. Yes, sir, all the scuppers have it except those in our berth.

596

By Mr. MacFarland:

Q. Is it only through those openings that liquid can flow down to the bilge below? A. Yes.

By Mr. Kirlin:

Q. Is it iron? A. Brass; the ones in our berth has a different grating.

By Mr. Black:

Q. Did the molasses stop flowing from N. 3 into this scupper in the engineers' berth after those plugs were opened? A. It used to stop if the holes were blocked up.

597

Q. If they were opened did it commence again? A. Yes.

Q. Do you mean to say that that molasses continued flowing through those after holes all the voyage? A. For three or four days.

Q. Did it flow as long in the after holes as it did in the forward ones? A. Not so long.

Q. Not so continuously? A. No.

Q. Did it flow as fast in the after holds as it did in the forward ones? A. No,

Q. Was it in the same general condition as to being fluid or not? A. Yes.

598 Q. You didn't notice any difference between what flowed from the after and forward holes? A. About the same; I didn't see any difference in the condition of the fluid.

Q. You said that there was some round manholes on your direct-examination; are those the same holes which you mentioned on your former examination as being trimming holes for grain cargo? A. I don't remember mentioning it.

Q. They are for trimming grain, aren't they? A. Grain feeders.

Q. And they are covered with an iron plate bolted to the deck and made tight? A. Yes, sir.

Q. These coal bunker hatches you say had a
599 coaming around them? A. Yes sir.

Q. How high was that coaming? A. Four or six inches.

Q. How are those hatches secured as to making them tight? A. They are put down and caulked with oakum.

Q. And you know that they were so, don't you? A. Yes.

Q. Before this molasses was taken on board? A. Yes; they had been in that way for some time.

Q. Were there any other openings in that between-deck beyond these trimmer holes and the coal bunker hatches, and the large hatch holes and the scupper holes in that between-decks? A. You mean
600 on deck?

Q. Yes? A. There is nothing on the deck that I know of.

Q. Nothing besides those you have mentioned? A. No; only the iron doors in the bulkhead. The handpump goes down one side.

Q. That is filled up, isn't it? A. Yes.

By Mr. Parkin:

Q. When the sluices are opened what does the liquid that comes from the bilges run into in the engine-room; is there a tank or a well there? A. It

is like a tank there; you know it is the shape of the 601
tank when it is open.

Q. Does it run to the bilge there in the engine-room? A. Yes; what we term a bilge, a vacant space.

Q. A continuation of the bilge? A. Yes; but larger in the engine-room, larger space.

Q. The bilge extended so as to receive more liquid? A. Yes.

Q. Is it a large depression? A. It must be larger, because there is the water from the engines as well.

Q. It is quite a large depression to which the pump attaches itself? A. Yes.

By Mr. Kirlin: 602

Q. Had you any trouble keeping those rivet holes clear so the molasses would run through? A. Yes; there was a sailor at the one in the third engineer's berth, to keep the pieces of sticks and pieces of matting out.

Q. Did he stand by there all the time to keep them clear? A. Yes, sir; I had two nights myself in the bunker.

Q. To keep them open? A. Yes, sir.

Q. Did it stop up at all? A. Yes; and then after I got the coal out of the between-decks I let it run to the after end of the bunker; there was a scupper there.

Q. What I am directing your attention to is the 603
holes through the bulkhead? A. They got stopped up with the pieces of matting and pieces of stick.

Q. You had to stand by and keep those clear, did you? A. Yes, sir.

Q. How often did you have to clear them? A. No sooner get my back turned than have to do another one; sometimes they would run for an hour or two, and they might have been stopped for an hour or two.

Q. Did you find them clear stopped at any occasion? A. Yes, sir; with sticks sometimes.

604 Q. You did find them stopped with that, did you? A. Yes, sir.

Q. Then you cleared it away and went ahead again? A. Yes, sir, I did that.

Q. You haven't seen Mr. Maloney's testimony? A. No.

Q. All you know about it is what I told you this morning? A. Yes, and what I was told on board the ship last week.

Q. By whom? A. By the stevedore.

Q. Mr. Butler? A. Yes; that is the first I heard of it.

Q. You didn't have this read to you except short extracts? A. Just like the questions you asked me;
605 that is all.

Q. You didn't hear it read *in extenso?* A. No.

By Mr. Black:

Q. Did you have any accident on the voyage which brought you to New York in January of this year? A. Something happened to myself.

Q. What was it? A. I went down the ladder and very near broke my back with the list.

Q. What voyage was that? A. When she had the list.

Q. The voyage with the sugar cargo? A. Yes.

Q. I am talking of the voyage when you first got to New York in January to enter under this charter;
606 when you came over from Shiels to New York, did you have any accident of any kind on that voyage? A. Not that I know of.

Q. Didn't have a propeller shaft break or anything? A. No.

Q. Nothing happened to you at all? A. No; if it is the propeller shaft you are driving at—the propeller got loose when we left New York bound to Porto Rico, amongst the ice.

Q. I am talking of the voyage from Shields to New York? A. Nothing happened on that voyage.

Q. Did you have any very heavy weather on that voyage? A. Yes; we had heavy weather.

Q. Did you break up anything of your cargo? 607
A. I think I heard them say there was a little damage.

Q. What was damaged, the cement? A. I am sure I didn't pay attention to it.

Q. Who did you hear say that there had been damage? A. I heard the mate talking about it.

ROBERT CHESNEY recalled:

By Mr. Kirlin:

Q. You are the same witness of that name who was examined before? A. I am.

Q. Since you were examined Mr. Maloney, super- 608
cargo on the voyage in question, has been examined and testified in substance that while in Porto Rico, and before the hogsheads of molasses were stowed, he asked the question whether the between-decks was liquid tight, and that the captain called the mates, you being one of them, and asked you in his presence whether it was liquid tight, and the answer he received, either from you or the second mate or the captain, was that the between-decks was liquid tight; was that true? A. No; that is not true. Mr. Maloney knew the between-decks wasn't tight.

Q. How did he know it? A. Because I asked him if he wanted those places fastened down in the between-decks and he said no.

Q. What places? A. The feeder holes, because 609
they were fastened but not caulked; they were fastened down but not caulked.

Q. How many of those feeder holes were there? A. I think there is six in No. 2.

Q. How many are there abaft No. 2 hatchway? A. Two; one on each side.

Q. The engineer said he thought there was one on each side abaft the hatch? A. There is two abaft, one on each side, both abaft the No. 2 hatch.

Q. How many are there in the after end of No. 2? A. That is in the after end of No. 2.

Q. Two on each side? A One on each side.

610 Q. Where are the others? A. The others are above.

Q. Those two after ones he says he caulked himself; the ones you refer to are the forward ones, the ones you refer to as not being caulked? A. None of them were caulked; none of them was fast only just with the bolts.

Q. Mr. Murray, the engineer, testified that he had caulked two of them himself previously, the two after ones; I am asking you where the ones which you referred to were located in the between-decks? A. They were in the between-decks abaft No. 2 hatch.

Q. You said there were only two abaft the hatch?
611 A. There is only two abaft the hatch, one on each side.

Q. Where are the others? A. The others are further forward. There is two between, against the frames.

Q. And the other two I suppose are opposite the hatchway? A. The other two is before that again.

Q. Before the hatches? A. Yes, sir; there is no molasses near them.

Q. Molasses was all in the after part of that compartment? A. Yes, there was only two in where the molasses could get down.

By Mr. Black:

612 Q. Those were the ones aft of the hatch. A. Aft of the hatch.

By Mr. Kirlin:

Q. During the loading was Mr. Maloney down in the No. 2 between-decks? A. I believe he was.

Q. Didn't you see him? A. I won't be sure.

Q. You don't know? A. No.

Q. Did you see him in the bottom, in the lower holds anywhere? A. He might have been down, but I can't say.

Q. Do you know whether your limbers were clear

at Porto Rico or not? A. They were perfectly clear. 613

Q. How do you know that? A. By lifting the limber boards.

Q. When did you lift them? A. I had them up in Porto Rico.

Q. The two boards? A. Yes.

Q. On both sides? A. Yes, and in New York also.

Q. Before you went down? A. Before I left New York.

Q. You say they were clean and clear? A. Clean and clear.

Q. Did you try the sluices in Porto Rico? A. Yes.

Q. What condition were they in? A. They were clear. 614

Q. Did you try particularly the sluices leading from No. 2 hold into the engine-room compartment? A. Yes, sir.

Q. On both sides? A. Yes, sir; whenever there was any water got into the hold, or anything, we always try the sluices.

Q. Is it a usual practice to try them in port before starting on a voyage? A. Yes, we always keep them in working order; we work them every week when we are at sea; when we sound the well, if there is no water we don't open the sluices, but the carpenter goes in every Saturday to work the sluices. 615

Q. Whether there is any water in or not? A. Yes.

Q. Did you see the carpenter make soundings on the voyage? A. Yes, sir.

Q. Regularly? A. Yes, regularly.

Q. Do you know how the sluices were from the morning after the steamer took a list until the arrival in New York? A. They were open.

Q. Do you know that of your own knowledge? A. Of my own knowledge, because I ordered them to be opened when the ship took a list, and I couldn't get any proper soundings; I knew the cargo was

616 adrift in the hold; there wasn't anything came through, not to my knowledge.

Q. They were left open from that time until the steamer arrived at New York? A. Yes, sir.

Q. The steamer took a list at night? A. About six o'clock at night.

Q. How soon after was the starboard sluice opened? A. It wasn't opened until next morning.

Q. From that time until the ship's arrival in New York it was open all the while? A. All the time.

Q. Was the port sluice open in the same way? A. Yes, they was both open.

Q. No. 2? A. Both on each side No. 2; the ones aft I had nothing to do with.

617 Q. Mr. Maloney also testified that when the ship was delivered to the Porto Rico Company under this charter there was some chemicals left on the floor in No. 2 hold; is that true? A. There was none left on the ceiling of No. 2; there was a little between-decks, but that had nothing whatever to do with the cargo.

Q. Was the No. 2 bottom all cleared up? A. Yes, the bottom was all cleared up.

Q. Were the limbers in that hold taken up? A. Yes.

Q. Under your supervision? A. Yes, sir; all the limbers was looked at.

Q. I am asking you particularly about No. 2? A. Yes.

618 Q. Were the limber boards taken up? A Yes, sir.

Q. It is customary to leave limber boards off on voyages at sea? A. I have done it in sailing ships.

Q. Is it customary in steamers? A. It wasn't necessary in this ship because she is not caulked; she has not a caulked ceiling in the lower hold.

Q. In sailing ships is the ceiling caulked usually? A. Mostly.

Q. All tight? A. Tight.

Q. The object of lifting the limber board out is to allow drainage to get in the bilge, is it? A. Yes.

Q. And that isn't necessary in this case because the floor isn't tight; is that right? A. We didn't want to leave it off because the floor wasn't tight to hold molasses on the ship's ceiling. 619

Q. It wasn't necessary? A. It wasn't necessary to keep the limbers off.

Q. When you got to Porto Rico Mr. Maloney testified that a bag full of chemicals became touched with water, and most terrible fumes arose from it, driving everybody from the holds.

Mr. Black objects that Mr. Maloney didn't testify it was when he got to Porto Rico.

Mr. Kirlin: While in Porto Rico, then.

Mr. Black objects that it wasn't while in Porto Rico. 620

A. You are mistaken altogether about that bag of chemicals; it wasn't a bag at all; it was little sweepings that they had swept up and left lying in the hold that I wasn't aware of; the stevedore had taken it up one night; his men had swept it up in a heap, and some drainage of sugar got in this chemical, and I sent one of my men down and filled it into a bag, and of course, with the sugar and the chemicals coming together, it burned the bag.

Q. Was it gathered up then? A. Gathered up then and put into a bag, and when the men went to lift the bag, the bag went all to pieces; I went down and filled the thing up into pails myself and sent it on deck. 621

Q. Was it every bit taken out and put overboard? A. Yes, sir.

Q. Where was it this occurred? A. San Juan.

Q. This was after the ship had been delivered to the Porto Rico Company and made the outward voyage? A. Yes; she had discharged her cargo and loaded again; we was just finishing loading in Porto Rico.

Q. Did any of it get into the lower hold? A. No; not an ounce of it.

622 Q. The between-decks is iron? A. Iron. It wasn't near the molasses where any of the leakage was whatever.

Q. Did it get to the scuppers at all? A. No; not within a hundred feet or more than a hundred feet of the scuppers.

Q. How much was there in quantity? A. There would be about two pailfulls of it.

Q. What was it? A. Phosphate of lime or soda ash, I think.

Q. Did you examine the scuppers in the between-decks any in Porto Rico to see whether they were clear and free? A. Yes.

Q. Where? A. I couldn't say the place, but be-
623 fore we put the molasses in.

Q. What condition did you find them in? A. Found them good, the same as they are now.

Q. What condition is that? A. Good.

Q. Clear? A. Clear.

Q. Did you hear Mr. Maloney ask the captain, or any other person on board, whether the between-decks in No. 3 hold was liquid tight? A. Not in my hearing.

Q. Did he ask you? A. No; he never asked me.

Q. Did you tell him? A. I told him the scuppers was there, and I told him the feeder holes was there.

Q. Were there feeder holes in No. 3 also? A. The
624 feeder holes in No. 3 is the same as what they are in No. 2.

Q. And is it true that you told him either one of the between-decks was liquid tight? A. No.

CROSS-EXAMINED by Mr. Black:

Q. What was the occasion that Mr. Maloney had to ask you about the between-decks; what was the reason of the talk; what was he talking about? A. He never talked any to me about the between decks. When the ship was out and ready for the cargo I asked him if he wanted those places secured, as I

knew he was going to put molasses in, and he said no, it wasn't necessary. 625

Q. And by "those places" you refer to the feed holes? A. Yes, sir; I saw the scupper holes was clear, and that, I thought, was all my duty I had to do.

Q. You mean to be understood that Mr. Maloney told you that it was in his judgment right enough to put molasses in that between-decks with those feed holes unsecured; is that what you desire to say? A. I had nothing to do with that whatever.

Q. Is that what you understood from what he said? A. Of course I understood that, but so far as I had to do with it, I had nothing to do with it.

Q. You had nothing to do with putting it there, 626
but you understood him to say to you that it was no matter whether those feeder holes were unsecured or not when he was going to put molasses in the between-decks? A. Yes, that is what I understood.

Q. Did he ask you about the condition of the coal bunker hatches? A. No; nothing.

Q. Did he say anything as to their condition? A. No.

Q. Did you hear him say anything to the captain about the condition of the between-decks? A. No, sir.

Q. And not ask the question at all to the captain? A. No.

627

Q. The captain never called you up and made any inquiry of you as to the condition of the between-decks? A. No.

Q. And you say now that you knew that those feeder holes aft of the hatch in No. 2 between decks were not caulked? A. I knew they were not caulked.

Q. You knew that if molasses drained out of those casks it would go through those holes? A. Yes.

Q. And you say that Mr. Maloney told you that he didn't want them fastened? A. Yes; he said he didn't want them fastened.

628 Q. Did he tell you why he didn't want them fastened? A. No; he didn't say.

Q. Did you think Mr. Maloney was crazy just then? A. I didn't want to think anything about it.

Q. Did you think any such thing? A. No.

Q. You are a man of some knowledge about carrying cargoes, aren't you? A. Yes.

Q. How long have you been carrying cargoes? A. This last twenty-five or thirty years.

Q. You have been master, haven't you? A. Yes, sir.

Q. How long have you been master? A. 1868.

Q. For how long a time? A. Twenty years.

Q. And then you were first mate for how long?

629 A. I can't say how long I have been first mate.

Q. Several years? A. Off and on a year or two.

Q. And you have had considerable experience in carrying cargoes, haven't you? A. Yes, I shouldn't have stowed the liquids on top of dry goods there, if you want my opinion.

Q. It didn't seem to you anything extraordinary that Mr. Maloney should suggest that he was going to carry molasses in the between-decks which you know had those feed holes open, so that the liquid could go through right on top of those feed holes? A. Yes.

Q. You thought that was all right? A. No.

Q. Did you see anything against it? A. No, sir;

630 he told me when I was interfering with him here, when he was loading the cargo, that I had nothing to do with it.

Q. Did you tell Mr. Maloney that those feed holes were open? A. No; I asked him if he wanted them fastened; that is all.

Q. Did you know whether the other feed holes were open too? A. Yes; they are all open now the same way as what they was then.

Q. Did you go into the lower hold at the time or before this molasses was taken in? A. I might have been down there several times.

Q. Do you remember being there? A. Not par- 631
ticularly.

Q. When you are testifying that those feed holes aft of the hatch were uncaulked, are you testifying of your own knowledge of that fact? A. I know of my own knowledge that they weren't caulked.

Q. So that when Mr. Murray swears that he caulked them it must be false? A. If he says he caulked them—they are not caulked now and they have never been touched.

Q. They couldn't have been caulked without your knowing it, could they? A. They might have been.

Q. Were the bunker hatches caulked? A. The bunker hatches were caulked.

Q. Were those liquid tight? A. I couldn't say. 632

Q. Were they intended to be? A. They were intedded to be coal-dust tight.

Q. Were they liquid tight? A. I can't say whether they was liquid tight; there was no tarpaulins on them, and they wasn't pitched.

Q. But they were caulked so as to make them sufficiently secure for liquids? A. I don't think they would stop liquids from going down.

Q. Did you examine the under side of the between-decks at any time? A. No; well, I looked up.

Q. Since that cargo of molasses was in her? A. Yes; I seen the molasses on the bulkhead and sugar, and it might have come from the lower hold.

Q. You say that the limbers were lifted and the 633
bilges cleaned? A. Yes.

Q. Where was that done? A. It was done both in New York and Porto Rico too.

Q. And yet you say you saw those chemicals left in the between-decks when the vessel get to Porto Rico? A. Yes, sir; the sweepings, what they swept up in the hold after the cargo was out; and I don't believe there would be more than two shovelfuls of chemicals, but the dust and muck that was swept up in the between-decks.

Q. That was left in the between-decks? A. Yes.

Q. Whereabouts? A. In No. 2 hatch.

634 Q. Whereabouts had it been swept up? A. In Porto Rico.

Q. It remained in the vessel from New York to Porto Rico? A. Yes.

Q. When they got to Porto Rico they swept up this quantity of chemicals in that between-decks? A. Yes.

Q. Was there any quantity of chemicals swept up in the lower hold? A. Yes.

Q. Did you attend to cleaning up the between-decks? A. Yes.

Q. Just as much as you attended to cleaning up the lower hold, didn't you? A. Yes.

Q. When you took these limbers out did you ex-
635 amine personally, yourself, between each frame to see the condition? A. Yes.

Q. You went all around that vessel, from one end of the bulkhead of No. 2 hold all around the other side and examined each limber? A. Yes.

Q. And you are prepared to swear that there were no chemicals in those limbers? A. There was no chemicals in them, not a pound.

Q. How is it that so much chemicals remained in the between-decks? A. Two shovelfuls of chemicals isn't very much.

Q. Was there as much as two shovelfuls in the lower hold? A. There might have been two shovelfuls in the lower hold if it was all gathered up, but
636 that won't stop anything.

Q. I ask you was there as much as two shovelfuls in the lower hold? A. No, when we started to take in the sugar.

Q. Was there any in the lower hold? A. There was none.

Q. Wasn't there as much as there was in between-decks? A. No, it was left in between-decks by neglect of Mr. Maloney's laborers that swept it up, and I expected it was taken up at the time, but they went and put a bag or two of sugar on top of it, and this sugar had to be removed.

Q. You didn't discover those chemicals until you

got to San Juan? A. I discovered it at San Juan, and as for driving all the men out of the hold, that is a falsehood. 637

Q. Whereabouts was this bleaching powder that you had on board carried? A. It was carried in No. 3 and No. 2 holds.

Q. What part of No. 2 hold, between-decks or below? A. Both between-decks and the lower hold.

Q. Were any of those casks started in the voyage over? A. Yes.

Q. Some of the powder got out? A. Yes.

Q. How many of the casks were started? A. I don't know.

Q. How many broken up? A. I don't know.

Q. Any of the contents of any of them spilled out? A. Yes. 638

Q. How many? A. Couldn't say.

Q. How much was gathered up? A. I don't know.

Q. Was any cement broken? A. Yes.

Q. Where was that, in the lower hole? A. No.

Q. Where? A. In the between decks.

Q. Of No. 2? A. Yes.

Q. Did that get mixed with the soda ash or the bleaching powder? A. There might have been a little mixed into it, but there was none broken in No. 2 hold; there wouldn't be half a barrel broken up.

Q. There was a good deal of the siftings there, wern't there, from the barrels? A. No, there was none loose in No. 2 hold. 639

Q. You said a little while ago there was some loose cement there? A. Might have been some; that was gathered up before we went away from here.

Q. A lot of barytes in bulk? A. Yes.

Q. Where was that? A. No. 1 lower hold.

Q. Any bulkhead in No. 1 hold? A. Yes.

Q. Was it forward of that bulkhead? A. Yes.

Q. And that rested on this open floor which you have described? A. Not an open floor.

Q. It is a floor that was not caulked? A. Not caulked.

640 Q. It was sufficiently open in your judgment not to require those limbers to be taken off? A. It would let water through.

Q. It was sufficiently open in your judgment not to require those limbers to be taken off when you have sugar? A. Yes.

Q. Wouldn't it let those barytes through? It is quite a different thing to liquid.

Q. It is a powder, isn't it? A. No, it is a little pebble larger than peas; our ceilings are pretty well grain tight, though they are not water tight.

Q. Doesn't this pebble become broken up in dust? A. No, it is hard as a rock.

Q. No dust at all? A. No, some of it is as big as
641 a marble and some as little as peas.

Q. The bleaching powder is dust? A. Yes.

Q. Wouldn't that go through these ceilings? A. No, I don't think it would; sugar wouldn't go through without there was water with it.

Q. You are not sure it wouldn't go through, are you? A. No, I am not sure.

Q. Were the limbers fitted tight, or were they open, the spaces between where they came? A. The limbers was tight; there may be small holes in them, but not to let down anything but liquids.

Q. It wasn't so that the drainage of that sugar could pass through those limbers? A. Yes.

Q. All that came from the sugar would go
642 through without any trouble? A. Yes.

Q. And you think the sugar itself would go through? A. The drainage of it might go through.

Q. I said the sugar itself? A. The sugar did get through after, above in the No. 1—but then the ceiling was washed up after that, it washed the limbers out of place with the quantity of molasses that was down below.

Q. The hogsheads were standing on top of the limbers? A. The hogsheads were broken up.

Q. In the lower hold? A. Yes, a good many of them in the lower hold.

Q. Do you mean to say by that, the sugar that

got in the bilge got through the limbers that were washed up that you spoke of? A. All the sugar that got in there must have washed up by the molasses washing up and then settling again—if you put a lot of sugar in among molasses and stir it, it will all be molasses, but if you leave it for a moment and let it stand, you will find the sugar will settle to the bottom again. 643

Q. Those limbers, in your judgment, were loose enough to come right out? When the fluid came there they would float right out? A. Yes, when they got a quantity they would float up, perhaps.

Q. And then they would come out? A. Yes, sir.

Q. And you found limbers out? A. Part of the limbers was out where the quantity of molasses was. 644

Q. Did you find any limbers out? A. I didn't find them out where I found the most sugar in.

Q. Did you find any limbers out? A. I can't remember now whether there was any of them out or not.

Q. Did you tell your captain about Mr. Maloney's not wanting those feeder holes caulked? A. No.

Q. You didn't think it important to mention that to the captain? A. No.

Q. Did you report it to anybody? A. No.

Q. Did you enter it in your log? A. No.

REDIRECT by Mr. Kirlin:

Q. Are there any scuppers in your cabin? A. Yes. 645

Q. Any scuppers in the captain's cabin? A. In the captain's cabin and in the spare berth, in case of water going into the cabin, to let the water run into the limbers.

Q. Scuppers in all the engineers' rooms too? A. Yes.

Q. After you discharged your cargo at New York before you started on the voyage to Porto Rico, was your hold all cleaned up? A. Yes, sir.

Q. How was it cleaned? A. By sweeping.

Q. Was it washed down? A. It wasn't washed.

646 Q. Were the limbers washed down? A. The limbers was all cleaned; there was nothing in the limbers whatever.

By Mr. Black:

Q. The limbers were not washed? A. No.

By Mr. Kirlin:

Q. Was there anything in them to wash? A. There was nothing in the limbers; the ship made no water, and there was nothing in them. They were quite dry. We go around every time and try; we always go around the limbers and clean them all out if there is any signs of anything in them.

647 Q. After you had got through cleaning up the holds, whom did you turn the ship over to; who had charge of the loading? A. The stevedore, Mr. Butler, from the office.

Q. Was any objection made about the way the holds were cleaned up? A. No; Mr. Butler done part of it himself; he cleaned No. 2 up himself.

Q. Do you know whether he was paid for that or not? A. Yes.

Q. How much? A. Thirty-six dollars I believe the captain paid him for it.

Q. And he cleaned the No. 2 compartment himself, did he? A. Yes.

Q. Bottom and top? A. Bottom and top. We
648 had all the rest of the holds cleaned up but that one when we got down there; that was the last hold getting out.

Q Down where? A. To the Atlantic Basin, to the loading berth in New York.

By Mr. Black:

Q. That was in January? A. In January.

By Mr. Kirlin:

Q. Did you hear Mr. Moloney ask whether the drain pipes were all clear in No. 3 hold or No. 2 hold? A. No.

Q. Did you hear him ask where the drain pipes were located in either the No. 2 or No. 3 hold? A. No, he wouldn't ask me; he would ask the second mate. 649

Q. Did you hear him ask about it? A. No, I didn't hear him.

RECROSS by Mr. Black:

Q. Did Mr. Moloney ask you to try the sluices or was that part of the ship's duty? A. It was the ship's duty.

Q. Was that done regularly every day? A. Yes, but we never open the sluices until we find water, without it is on a Saturday, and then we always open them around to keep them in working order. 650

Q. Did Mr. Moloney ask you not to let the molasses escape? A. No.

Q. You knew that Mr. Moloney asked to have holes knocked in that bulkhead to allow the molasses to get down into the coal bunkers, didn't you? A. I think he asked the engineer.

Q. You knew of it, didn't you? A. I knew he tried to get the molasses, to keep it clear from running down on the bags. When they loaded the ship I said, "Whatever you do, keep them bags from under the feeder holes." He says, "It won't hurt the hogsheads if there was a little leak went down;" but then they put bags underneath as well.

Q. You thought it was good judgment to let the molasses get out of the between-decks and run into the coal bunkers? A. Yes. 651

Q. And you thought it would be good judgment to open the sluiceway and let the drainage out? A. Yes, to get the ship upright.

Q. Isn't it proper when you are carrying a cargo to let the drainage out? A. Yes, sir.

652 JOSEPH H. WATSON, being duly sworn and examined as a witness for the claimants, testified:

By Mr. Kirlin:

Q. What is your occupation? A. Second officer of the *Centurion*.

Q. How long have you been in the *Centurion?* A. Twelve months come August since I joined her.

Q. Were you on board on the voyage from Porto Rico to New York when the steamship took a heavy list and spilt molasses and damaged sugar? A. Yes, sir.

Q. During the month of February last past? A. Yes, sir.

653 Q. Were you on board when the steamer went from New York to Porto Rico? A. Yes.

Q. Preceding that voyage? A. Yes.

Q. And did you come with her from England to New York? A. Yes.

Q. After the cargo from England to New York was discharged in New York were the holds cleaned up before she was delivered? A. Yes, sir.

Q. Did you see them cleaned yourself? A. Yes, sir.

Q. Did you examine them carefully after they were cleaned? A. Yes, sir; I was down in the holds all the time

Q. How clean were they? A. As clean as we
654 could make them with soft brushes.

Q. Did you open and examine the limbers? A. Yes, sir; every voyage we do that.

Q. Did you on this occasion? A. Yes, sir.

Q. Did you yourself look into all the limbers of the ship? A. Yes, sir.

Q. What condition were they in? A. When I went with the men to look at No. 2 it might be more than half full of sugar.

Q. I mean in New York before you started to Porto Rico? A. They were clean.

Q. Did you examine the sluices? A. Yes, sir.

Q. Were they open and free? A. Yes, sir, and 655
free.

Q. When you got to Porto Rico did you examine the limbers and sluices again? A. Yes.

Q. Yourself? A. Yes.

Q. All of them? A. Not in the fore end of the ship; in the after end of the ship I examined them; that is my end of the ship.

Q. Did you yourself see No. 2 sluices whether they were opened or not? A. No, the carpenter would open them; the mate would give him his orders to open them.

Q. Did you yourself see them? A. I saw them after they were opened.

Q. Were they free? A. They were half full of 656
sugar.

Q. I mean in Porto Rico? A. No, I didn't examine No. 2 hold in Porto Rico. The after end of the ship is my end of the ship.

Q. Were your sluices all right, your end of the ship, in Porto Rico? A. Yes, sir.

Q. Were you aboard when the molasses was put in the between-decks? A. Yes, sir.

Q. Mr. Maloney testified that he asked the captain whether the between-decks was liquid tight, and that the captain sent for you and Mr. Chesney and asked you in his presence and received an answer that the between-decks were liquid tight. Was that true? A. No, I didn't hear him ask that, sir. 657

Q. Was that the fact? A. Yes, sir.

Q. Were they liquid tight? A. I couldn't have said they were liquid tight when they have got these iron feeders in them and they weren't closed.

Q. What do you mean by closed? Caulked? A. Closed up and riveted down. There is four holes in them for rivets to go in, and there was only one rivet in them.

Q. They were actually over the holes, weren't they? A. Yes, sir; over the holes.

Q. But not caulked? A. Not caulked.

Q. Did you hear Mr. Chesney and Mr. Maloney

658 have any conversation about the caulking of those holes? Did you hear anything said by either of them on the subject? A. No, I didn't; I can't remember of ever hearing them talking about their being caulked.

Q. Do you remember hearing Mr. Chesney asking him if he wanted them caulked? A. I don't remember, sir.

Q. Did you hear Mr. Maloney ask whether the drain pipes were clear, the scupper pipes? A. No, sir; I did not.

Q. Did you hear Mr. Maloney ask where the scupper pipes were situated in the No. 2 and No. 3 hold? A. Yes, sir; the mate and chief engineer went down
659 to find that out, to see that they were clear.

Q. They were clear, were they? A. Yes, sir.

Q. Did you tell him where they were situated? A. Yes.

Q. Where? A. Very near abreast of the mast; it is in the after hold.

Q. And in the forward hold where? A. I don't know where they are, I never looked, I always look after my end of the ship.

Q. Mr. Maloney testified that you or somebody else told him that the scupper pipes in No. 3 hold were right up close to the bulkhead at the forward end of the between-decks; is that true? A. The chief engineer would do that.

660 Q. Did you tell him that the scupper pipes were in the forward end of No. 3 hold? A. No, sir, I couldn't tell him that when I didn't know where they were. I went down to where the scuppers is abreast of the mast.

Q. You saw they were not in the forward end? A. Yes, sir; we went and examined them; the engineer said they were in his berth like, in the engineers' berth.

Q. Then you had two opposite the mast? A. Yes, sir, near about opposite; the mast stands here and there is one here and one there (indicating on each side).

Q. Did you see Mr. Maloney in the between-decks either the forward or after part during the loading of the molasses? A. Yes, sir; many times I seen him at night time in the between-decks at both ends of the ship superintending the loading of the molasses. 661

Q. Was it you that went below at sea to help secure the molasses? A. Yes, sir, of a Saturday morning when we opened the hatches on the 25th, I think it was, the day we fell in with the water-logged ship.

Q. It was the next day after the steamer took the list, was it? A She had this list then.

Q. Was it the day following the list, according to your recollection, that you went below? A. When the fine weather was we went below; it was on a Saturday morning, if I don't make a mistake. 662

Q. The log book says Thursday morning? A. Not when I opened the hatches.

Q. You went down a second time? A. Yes, sir; it was my watch on deck on Saturday morning.

Q. You went below on that day? A. Yes, sir.

Q. How was the molasses, much of it on the between-decks? A. The casks was empty.

Q. How many? A. Most every one that we handled.

Q. How many did you handle? A. We shook them like this; more than twenty.

Q. Were they stove in? A. Some of them, there was one or two of them bilged in; the others were turned over on the bung; it looked as if it had run out of the bung. 663

Q. Turned over bung down? A. Yes, sir; ran out of the spile hole.

Q. What was the character of the voyage, in general terms? A. Very rough, sir.

Q. Have you ever had a worse time than you had during one or two of those days? A. This last two voyages we have been down there we just had as bad, pretty near. We seem to get it every time in the same place.

664 Q. That is in the Gulf Stream, is it? A. Yes, sir.

Q. You say the voyage was severe, as a whole? A. Yes.

Q. And on those two days was exceedingly rough? A. Yes.

Q. Did the steamer keep the list that she got all the way to New York? A. All the time, sir.

Q. On arrival at New York you saw the cargo discharged, did you? A. Yes, sir.

Q. Did you have molasses in the lower hold, either No. 2 or No. 3? A. Yes.

Q. How much? A. The lower tier; the molasses was very nigh over the lower tier.

Q. In which hold? A. In No. 2 hold.

665 Q. In No. 3 was there much? A. A couple of feet, it might be; I didn't take particular notice about that.

Q. Did you notice how many hogsheads of molasses were gathered up and taken ashore? A. No, sir; I never counted them.

Q. Did you examine the limbers after the cargo was all discharged? A. Yes, sir.

Q. What was their condition in No. 2 hold? A. I think about half full they were, of this sugar; thick sugar.

Q. How did you get it out? A. Took a small shovel and shoveled it out.

Q. Was that above the sluiceway? A. Yes, sir;

666 it was above the sluices.

Q. A good distance above the sluices? A. Yes, sir.

Q. Was that true of both sides, starboard and port? A. Yes, sir; both sides, not on the high side there wasn't so much sugar as there was on the lower side; the side where the list was.

Q. Not on the port side there wasn't as much? A. No.

Q. The list was to starboard? A. Yes, sir.

Q. Was there sugar in the bilges aft? A. There wasn't very much in the limbers aft.

Q. They were all cleaned up, were they, on the

voyage from New York down to Porto Rico? A. 667
Yes, sir.

Q. You went in ballast, didn't you, the next trip? A. Yes.

Q. Did you see any soundings made on the voyage up yourself? A. Yes, sir; every morning at six o'clock the carpenter does that every morning aboard our ship.

Q. Did you see him doing it at all? A. Yes, sir; I seen it.

Q. Is he a good, reliable man, your carpenter?

Mr. Parkin objects.

A. Yes, he is a pretty good man. I don't know where he is now. 668

Q. You are going away with the *Centurion* this afternoon, are you? A. Yes, sir.

CROSS-EXAMINED by Mr. Black:

Q. When did you join the *Centurion?* A. I think it was in August, last year.

Q. That was August of 1892? A. Yes.

Q. And you have been the second mate on board all the time? A. All the time.

Q. She made a voyage from Shiels to New York, and discharged cargo in New York? A. Yes, sir.

Q. Did she have any damage to the cargo on that voyage? A. Yes, sir.

Q. What kind of damage; did the cargo shift or 669
break up, or what? A. Shifted and broke up; some of the casks of cement, and this—I forget what you call it.

Q. Barytes? A. Yes, sir.

Q. What hold was the most damage in on that voyage when you got to New York? A. No. 2, I think it was.

Q. Lower hold or between-decks? A. Lower hold.

Q. Any damage in the between-decks? A. Yes; there was some damage in the between-decks; I know there was a lot of damage in the between-decks in the after hold.

670 Q. I am speaking now only of No. 2. You found some broken cargo in the between-decks in No. 2? A. Yes, sir.

Q. What kind of cargo was that? A. I think it was barytes, or else it was soda ash.

Q. You had some bleaching powders on board as well? A. Yes, sir.

Q. Do you remember where they were? A. I think it was in the lower hold of No. 2.

Q. Were those broken at all, too? A. Several of them broken, I believe.

Q. You had pretty rough weather on that voyage? A. Yes, sir; very rough weather.

Q. And that cargo which was broken up was
671 gathered up and shoveled up when you arrived at New York, the best you could? A. Yes, sir; the best we could.

Q. And then the vessel was swept up? A. Yes, sir.

Q. Was everything, so far as you could see, cleared up off the decks—all the rubbish and stuff taken away? A. Yes.

Q. Were the decks washed down at all? A. We couldn't wash them down; they were thick with ice and snow; we used to try and——

Q. You didn't wash them down? A. No, sir.

Q. You didn't wash out the sluices or bilges? A. Didn't wash them out, but cleaned the dirt out?

672 Q. What did you clean with—shovels, or how did you get it? A. When there is any water in we always have a shovel and go down and get it out the best we can, and with our hands.

Q. You didn't have any attention to pay to No. 2 lower hold? A. No, sir.

Q. Your end of the ship was 3 and 4? A. Yes, sir.

Q. When you examined the sluices in 3 and 4 you mean the connection between the well in the after end of the ship? A. Yes.

Q. That is the sluice, you mean? A. Yes, sir; the sluice in the sides and the limber holes. I didn't

look down the well myself to see if it was clear; just 673
the limber boards.

Q. What do you mean when you speak of sluices; do you mean the bilges? A. I am speaking about the limbers. The limbers were clean; the engineer always looks after that.

Q. The sluices? A. Yes, sir; down below.

Q. You don't have anything to do with the sluices? A. Yes; if they want to open a sluice on deck we tell the carpenter to do it.

Q. So far as seeing the sluices are clear, that is the engineer's work? A. Yes, sir.

Q. You say you take up the limbers? A. Yes, sir.

Q. To do that what do you have to do? A. Take 674
up the limber board.

Q. Is that screwed down or loose? No; we have a crowbar and pinch them up.

Q. They are pretty tight? A. Not very tight; you have to use a crowbar to pinch them up.

Q. When you got that up—that exposed, how large an opening when you took out one of these limbers? A. I reckon the limbers are about three feet long; I never measured them; I couldn't say.

Q. Give me your best judgment? A. Yes; about three feet long and two feet broad.

Q. Those are made of plank joined together, or are they separate pieces one after the other that you take out? A. The limbers, you mean? 675

Mr. Kirlin: The covering of the limbers.

The Witness: It is wood.

Q. You speak of taking out a limber. Do you take it out all in one piece like a hatch cover? A. The limber boards are about 8 feet long or 10 feet long some of them, the timber boards.

Q. Those that you speak of being 3 feet long, what are those? A. I misunderstand what you mean. I mean where the limber is 3 feet long and about 2 feet broad, but the limber boards--they might be 8 or 9 feet long what we lift up.

676 Q. The limber boards and the limbers are two different things? A. Yes, sir; the limbers are in the sides of the tank; they hold the water, and where the limber holes is to let the water run through each side of the tank.

Q. The limbers are between the frames of the ship? A. Yes, sir.

Q. And the holes are in the frames to let the water pass from one to the next? A. Yes, sir; two or three inches.

Q. The limber boards lay on top of those? A. Yes, sir.

Q. How long and how high are those? A. Some 6, some 9 and some 3 feet long.

677 Q. How wide? A. These planks would be a foot and a half, I should think, 3 inch plank.

Q. Made out of three or four planks? A. Yes, sir.

Q. Are they fastened together so as to come off all at once, or do they come off in separate pieces? A. One at a time.

Q. So when you open one of those holes you take out maybe 3 or 4 planks of the length of the cover? A. The cover takes 3 or 4 planks.

Q. To take off that cover you take off first one piece of plank and then another and then another? A. Yes, sir.

Q. Each of those being the same length, so when they are in place they cover up two or three limber
678 holes? A. Yes.

Q. Have you ever been in No. 2 lower hold to see how it is arranged there, I mean the limbers? A. I never cleaned the limbers out, only when the mate went down to have a look at them I went down with him to see how much sugar was in there.

Q. You saw them then? A. Yes, sir.

Q. The limbers in that part of the ship are the same as those in the after part? A. Near about the same.

Q. That is, they are 7 or 8 or 9 feet long, and running over two or three limber spaces? A. Yes, sir.

Q. How many holes are there in the frames of 679
the ship which allow this stuff to go through in these limbers? A. Each frame has a hole.

Q. Only one hole? A. I believe it has one hole.

Q. How large is that hole, did you say? A. Might be two inches or three inches; I never measured it.

Q. When you saw those limber holes in New York were the covers on or off? A. The covers was on.

Q. Were they all in place? A. Yes, sir; every one in place.

Q. Who took them off? A. The carpenter.

Q. You were there when they were taken off? A. I wasn't there when they were taken off; when the men was cleaning I went down to have a 680
look at them cleaning them out.

Q. Were they off at that time? A. Yes, sir.

Q. But they fitted tight, so you would have to use crowbars to get them off? A. Yes, sir.

Q. They wouldn't come up easily; they wouldn't float up? A. There is handles on the end of them: sometimes they will come up without pinching them up, and other times you have to pinch them up; it just depends on how they swell.

Q. When you saw them how full of sugar and stuff were these limbers? A. Might have been a little over being half full.

Q. Were they all about the same fullness? A. I couldn't say now. 681

Q. As you went aft along the vessel did they get fuller or did they remain just about the same proportion of fullness; in No. 2 hold when you started at the bow and went along those limbers, did you find sugar about the same height in all of them? A. Yes, I think it would be about the same height.

Q. And that you think was how high? A. Might be more than half.

Q. Did it cover the holes in the frames? A. Yes, sir.

Q. And you saw them digging that stuff out? A. Yes.

682 Q. It was pretty hard, wasn't it? A. It was.

Q. Pretty solid? A. Had to use a good deal of force to get into it.

Q. At that time all the molasses and drainage had been scooped out and taken out of the hold? A. Yes, sir; there was men there to do that.

Q. Did you see that done? A. Yes, sir, I saw the men doing that.

Q. Were the limbers floating around in there when these men were taking out that molasses, or were they down in their places—the limber covers? A. There was several pieces of wood floating about.

Q. Were those the limber boards or odd pieces of stuff, dunnage, &c.? A. Some of them were limber
683 boards; there was three or four planks floating about off the top of the tanks.

Q. The flooring? A. Yes, sir, on top of the tanks.

Q. That wasn't fastened down? A. There was a few of them floating about.

Q. Did you see any limber covers floating about? A. Yes, some of them were off too.

Q. Floating on this stuff? A. Yes, we had to put them on again. Whether they floated off themselves or the men had taken them off I don't know.

Q. You don't know how they got there? A. No.

Q. The sugar and stuff which you saw was not in the port side, but all down on the starboard side
684 you think; there was some on the port side? A. There was a little on the port side.

Q. Was that the same hardness as that on the starboard side? A. I never tried that, shovelling myself, the men was cleaning it out.

Q. Did you see them work about as hard to get that out as they did on the other side, or harder? You formed some judgment; I want to know whether it was the same thickness and consistency? A. It wasn't the same thickness, there was some of it in, might be two or three inches.

Q. It wasn't as deep, you mean? A. No.

Q. What there was of it, did they have to shovel just about as hard to get it out? A. Yes, sir. 685

Q. And it came out about in the same way as that on the starboard side? A. Yes, sir.

Q. Were there any hogsheads of sugar that were broken down there? A. Yes, there were hogsheads broken, but I didn't count how many there was.

Q. You saw the molasses stowed, did you, in Ponce? A. Yes, sir: I tallied the cargo, you see, and we don't pay much attention to the stowage, the purser does that himself. If you see anything out that is not stowed secure, you might call his attention to it.

Q. I am not speaking of that; I am only speaking of the fact that you saw it? A. Yes, I was standing there on the hatch when it was stowed. 686

Q. Were you down in the between-decks too? A. Yes.

Q. You saw the between-decks before the cargo was stowed? A. Yes, sir.

Q. In No. 2 between-decks? A. Yes.

Q. And in No. 3? A. Yes.

Q. Was it before the molasses came aboard that you went down to find out where the scupper was in No. 3? A. Yes, before the molasses came.

Q. Who was it asked you to go down? A. The purser says to me "How many scuppers is there in the between-decks," and I says, "I don't know how many there is, there might be 2, but I will go down and see exactly where they are, to be sure, as we are going to load molasses," and I asked the engineer if he knew where they were, and he said there was one beside the bulkhead, which I never found, but I found one abreast of the mast, and there was one near his berth. 687

Q. The engineer told you? A. Yes, sir.

Q. Did you go down and see that one too? A. I didn't go down and see that one.

Q. When you went down did you go and examine the bulkhead of No. 3 up against the engineer's

688 berth to see the holes that were in that bulkhead to reach the scupper which is in the engineer's room? A. No, sir.

Q. You know those holes were there, don't you? A. Yes.

Q. When did you first know that those holes were there? A. I don't know whether it was the day after or that day that I went down to look.

Q. Did you tell Mr. Maloney about what you had found down there, about the scuppers that you had seen? A. Yes, sir; if I am not mistaken Mr. Maloney went down with us to look.

Q. Did you go down in No. 2 between-decks too? A. No.

689 Q. Only in No. 3? A. I don't know much about No. 3 and 2 hold at all. I don't work that end of the ship.

Q. You went into No. 3, and you think Mr. Maloney went with you, and he saw these scuppers just as you saw them? A. Yes, sir.

Q. Was Mr. Maloney there when the engineer told you that there was a scupper in his room? A. Yes.

Q. Mr. Maloney was there then? A. No, I don't think he was there; no, he wasn't there; the chief engineer and me together.

Q. Didn't you tell Mr. Maloney that there was a scupper in the engineer's room as he told you? A.

690 Yes, sir.

Q. You say the scuppers were clean? A. Yes, sir.

Q. How do you know that fact, did you try them? A. The pipes?

Q. Yes? A. Inside of the pipes?

Q. Yes. A. There is a little grating over the top of it; I didn't put anything down to see if it was clean.

Q. Then how can you say that the scuppers were free? A. Because I see all the holes on the top were clear.

Q. But the pipe might have been filled and you

never knew it? A. I never tried the pipes; I saw the grating on top was clear. 691

Q. Were these feeder holes in the between decks of No. 3? A. Yes, sir.

Q. Were there covers on those? A. Yes, sir.

Q. Were they bolted on? A. Yes; I think each one has one rivet on it to keep it in its place, so it won't get lost.

Q. Whose business is it to see that those bolts are put in and properly secured on board the ship? A. If we are going to load grain, we see that they are all right; that they are open.

Q. Whose business is it to see that they are put on? A. My business. 692

Q. Who is it attends to caulking them if they are caulked? A. I would see that they are caulked.

Q. Who did the work? A. The carpenter.

Q. Caulking of iron? A. Yes, sir.

Q. I thought the engineer did that? A. No; the engineer has nothing to do with the holds of the ship like that.

Q. Don't you call on him to do any caulking around iron? A. No, sir; it is out of his line altogether.

Q. Mr. Maloney had some talk with the captain before this molasses came on board about the condition of the holds, didn't he? A. I never heard him.

Q. Didn't you hear him say anything at all about it? A. How do you mean, the condition? 693

Q. He had some talk with the captain about the holds? A. I don't know what he was talking with the captain about.

Q. Didn't you hear him say anything? A. No, sir.

Q. How was it Mr. Maloney came to ask you about where the scupper pipes were? A. He asked me if there was any scuppers in the hold, and I said there were sure to be scuppers in, but I didn't know exactly where they were; I would go down and examine them, to see where they were.

694 Q. He wanted to know where they were? A. Yes, sir.

Q. He wanted to know where they were with reference to stowing molasses? A. Yes, sir.

Q. He told you he was going to put molasses in there? A. Yes, sir.

Q. You knew that he wanted to find out for the purpose of stowing molasses where the scuppers were? A. Yes, sir.

Q. And it was for that purpose that you went down? A. Yes, sir; when I see he was so very particular about it, I went down.

Q. You thought he was particular? A. Yes, sir; I thought he was.

695 Q. Didn't he ask anything about the decks being tight? A. I think the mate asked him if it mattered about these things being on, and he said no, it didn't matter about their being on; if it dripped down on the hogsheads it wouldn't hurt them.

By Mr. Kirlin:

Q. What do you mean, the manhole covers? A. Yes, sir; these feeders didn't matter much; it wouldn't hurt them.

By Mr. Black:

Q. You asked Mr. Maloney about those covers?

696 A. Yes, sir.

Q. Did Mr. Maloney, when he was down with you, look at those covers in No. 3? A. I couldn't say whether he went and examined them or not.

Q. He looked at the scuppers with you? A. Yes, sir.

Q. And he went up after that and had some further talk with the mate? A. Yes, sir.

Q. Were you there when he had that talk? A. No, I wouldn't be there when he would go and talk to the mate about anything.

Q. Were you there when the talk was had about the covers being on or not? A. Yes; I was there

when the mate asked him if it was requisite for 697
them to be on or not.

Q. Was that before or after Mr. Maloney had been down to look at the scuppers? A. That was the day when we went down to look at the scuppers, in the morning.

Q. The same day? A. Yes.

Q. Was it before you went down to look at the scuppers that he had this talk with the mate? A. I think it was after that.

Q. And you think he had been down there in that No. 3 between-decks and looked at the scuppers, and after that had a talk with the mate about these feed-hole covers? A. Yes.

Q. You say that you went down on the Saturday 698
which was the same day that you fell in with the waterlogged vessel? A. Yes.

Q. It appears, by your log, that on Saturday, the 25th of February, you fell in with the schooner *Caleb S. Ridgway*, water logged. Is that the vessel you were speaking of? A. Yes.

Q. On that day you went down into which deck? A. No. 2 hold in the between-decks.

Q. Did you take any man down with you? A. Yes, two men and the carpenter and Mr. Maloney.

Q You got down how? Took the hatches off? A. I took a couple of hatches off.

Q. Was it heavy weather then? A. No, sir; as fine a day as ever came out of heaven. 699

Q. What did you find when you got down there?

A. Found a lot of casks tumbled any how, and a lot of ginger casks, broken, two or three of them, but there was a lot of ginger lying about amongst the molasses.

Q. The casks tumbled around any how were the molasses casks? A. Yes, sir.

Q. And you found some of those with the bungs down? A. Yes, sir.

Q. The molasses running out? A. Yes, sir; and several with their heads out.

Q. And the staves broken and knocked to pieces?

700 A. Yes, sir; staves broken and smashed up altogether.

Q. Before you went down on this day had you heard any noise of the cargo rattling around in there? A. Yes, sir.

Q. What day had you heard that? A. I think it was two days before that, when we had this heavy breeze, when we had to lay the ship to; it was the day when she had such bad weather, it might be the 23d or 22d.

Q. According to your log, at 6:30 P.M., a heavy sea struck the ship, heaving her on her beam ends, washing deck cargo adrift and giving the ship a heavy list to starboard? A. Yes, sir.

701 Q. Do you remember about the ship being on her beam ends? A. Yes sir; it was my watch on deck; when the deck cargo got adrift that night I called all hands to secure it.

Q. It was your watch, was it? A. Yes, sir; from six to eight.

Q. When she came over on her beam ends did she lie over there or did she come right back again? A. Yes, just looked like a log in the water.

Q. How long did she lie over that way? A. All the time; never seen her straighten herself until we got to New York.

Q. Kept a heavy list all the way? A. Yes, sir.

Q. Didn't this heavy list carry her further over
762 than she was when she got to New York? A. Just at the time it might, because the water was coming aboard all the time.

Q. By your log it appears that on the 24th of February the sea swept the deck cargo overboard, breaking the bulwarks, rails, and doing other damage about the deck, breaking ventilators and washing water casks overboard? A. Yes, sir.

Q. You knew of that? A. Yes, I was on deck.

Q. Is that all true, what is entered here? A. Yes, sir.

Q. How many water casks were washed overboard? A. Two.

Q. How were they secured? A. With iron bands 703
bolted into the deck. There is bolts in the deck and then iron bands on the cask to fasten them.

Q. Into what part of the deck were they carried? A. Near abreast of the after part of the engine-room.

Q. On which side? A. Either side of the ship, starboard or port side.

Q. One on each side? A. Yes, sir.

Q. How long had they been in that position on the vessel, since she was built or since you had been on her? A. We always used to take them adrift to paint the casks; I don't know how many times we painted them, two or three times.

Q. I am asking you how long you had carried 704
them on your vessel in that position? A. Always carried them that way.

Q. Were those casks secured properly, safely for ordinary weather? A. Yes, sir.

Q. What was it gave way to let them go adrift; did the iron bands tear out? A. The boltheads in the deck cracked; the deck cargo knocked the casks and broke the bands in the boltheads.

Q. And came overboard? A. Yes, sir.

Q. I see by your log that on the 17th of January your crew were at work clearing up between-decks; I suppose at that time all your cargo which you brought from Sheils was out of the ship, wasn't it? A. Yes, sir. 705

Q. That clearing up was the ordinary clearing up just as you have described it? A. Yes, sir; three or four sweeps.

Q. Did you know of any part of this cargo which had been brought from England being found in the vessel when she arrived at San Juan? A. I think there was a bag of this barytes stuff, quicklime or whatever it was, was found in the between-decks forward; No. 1 hold, I think it was. It was taken up down at the Island; that was before we loaded the molasses.

706 Q. That was before any fresh cargo was put aboard? A. Yes; it was taken up.

Q. And it wasn't brought back in the ship to New York? A. No, sir; tossed it overboard.

Q. Was it in a bag or lying loose? A. It was in a bag, but it had eaten through the bag.

Q. Had the cargo which had been carried from New York been lying on top of it? A. Yes.

Q. Or was it forward of that cargo? A. It was the fore part where we coil the ropes, &c.

Q. In among your ship's tackle? A. Yes.

Q. Do you know how that had come to be left on board? A. Yes; put one side when there was plenty of room in the between-decks, and left it
707 there.

Q. You mean that the crew that had cleaned up the vessel had left it there? A. Yes, sir.

Q. Did you see any other of that kind of stuff in the vessel while you were at Porto Rico? A. Yes, sir; but that was on deck.

Q. Whereabouts? A. In the bathroom, the W. C. on deck.

Q. That sweepings had been collected and put in there? A. Yes, sir.

Q. Did you notice what the stuff was; was it a mixture of this quick lime? A. I thought it was quick lime; we used to use it for disinfectant.

Q. It smelled like chlorine? A. Yes, sir; it had a
708 bad smell.

Q. Pretty strong smell? A. Yes, sir.

Q. Did you intend to say that you didn't hear Mr. Maloney ask if the scupper pipes were cleared? A. No; I say that I did hear him ask if the scuppers was cleared.

CROSS-EXAMINED by Mr. Parkin:

Q. Did you say that you had a rough passage when you brought the ship over from England here? A. Yes, sir; very rough passage.

Q. And some of the cargo got broken? A. Yes, sir.

Q. That was a good deal rougher than the pas- 709
sage to Porto Rico, wasn't it? A. Yes, sir.

Q. You say that coming up from Porto Rico on the last two voyages you have also met with some rough weather just about the same place? A. Yes, sir.

Q. What cargo have you brought up from Porto Rico last two voyages; sugar and molasses? A. Only the first voyage we fetched molasses and sugar.

Q. What have you brought on the last two voyages? A. Sugar and coffee; a little sugar.

Q. No molasses at all? A. No molasses.

Q. Was your cargo broken adrift on each of these last two voyages? A. No, sir.

Q. Had no trouble with it? A. No trouble at all; 710
yes, there has been some trouble with it; it broke the hatches open, the heavy cargo, but I don't think it was the weather that did it.

Q. You haven't had such a time as you had that first voyage? A. No, sir.

REDIRECT by Mr. Kirlin:

Q. Was the sugar that you carried on the last two voyages in bags or casks? A. Some in bags and some in casks.

Q. Has there been drainage from it? A. Yes, from the cask sugar, but not from the bags; this last voyage I didn't see any; the between-decks was as clear as if we had other cargo in. 711

Q. You didn't have any damage on any of the occasions when you had drainage, did you? A. No, sir.

Q. You have said that Mr. Maloney questioned you somewhat about scuppers and where they were located; was there anything to prevent Mr. Maloney from going down and finding these facts for himself?

Mr. Parkin objects.

A. No, sir; he had nothing to do but go right straight down in the hold and look himself.

712 Q. He had the same means of informing himself that you had, didn't he? A. Yes, sir; everything.

Q. As well about the scuppers as about the feeders? A. Yes, sir; he could see them if he looked down the hatch without going down.

Q. Did you have any discussion with Mr. Maloney as to the propriety of stowing molasses in the between-decks? A. I called the mate's attention one day, and said they wasn't secured from the wing as they ought to be, and the mate spoke to him about it and he went down and said it was all right; they were secured on one side from the wing, and secured from the hatch coamings on the other.

Q. He found them all right, did he? A. Yes, sir.

713 Q. Did you hear any conversation between the captain and Mr. Maloney about stowing molasses in the between-decks? A. Yes, the captain didn't care much about having molasses stowed in the between-decks.

Q. What did he say? A. I heard him say, "Well, I don't care about this molasses at all."

By Mr. Black:

Q. Did you hear him say that to Mr. Maloney? A. They had been talking down to the breakfast table, but any official talk to put a stop to it or anything I never heard.

714 By Mr. Kirlin:

Q. I don't mean that, but the captain's feeling about stowing molasses in the between decks? A. Yes, sir; he didn't care about having it there.

Q. Did you hear him say that to Maloney? A. Yes, sir.

Q. When was that? A. I couldn't exactly tell the date; it was one morning at breakfast time I heard the captain talking to him about it.

Q. Was that before or after they had put the molasses in? A. That was when they were putting them in.

Q. What did Mr. Moloney say? A. He said he often carried molasses in steamers. 715

Q. In the between decks? A. Yes, sir.

Q. Is that a fact in your experience? A. Yes, sir; I never seen molasses carried in the between-decks before. I never been shipmates with them before.

Q. You mean you have never been shipmates with molasses? A. Yes, sir.

RECROSS by Mr. Black:

Q. You carried up sugar in bags and in hogsheads on two voyages since the one on which this molasses was brought? A. Yes.

Q. Was that sugar in the No. 2 lower hold? A. Yes, sir. 716

Q. And in the No. 2 between-decks too? A. There was some sugar in there.

Q. And the sugar in hogsheads was in the lower hold of No. 2? A. Yes.

Q. And there was drainage from that sugar, wasn't there? A. Well, no, with that much molasses knocking about—I couldn't tell whether it was molasses drainage or sugar drainage.

Q. It is just like molasses, the stuff that comes from the sugar hogsheads, isn't it? A. Yes, sir.

Q. I am speaking entirely of the last two voyages; you understand that, don't you? A. Yes, sir.

Q. Confine your attention to those last two voyages? A. This last voyage I didn't see any drainage from the sugar in the between-decks. If there was any it was very little. 717

Q. I didn't say in the between-decks; I said in the lower hold. You saw drainage from the sugar in the lower hold in both voyages, didn't you? A. Yes, sir.

Q. Where did that drainage escape to; where did it go to? Did it go into the bilges? A. Yes, some of it came in the bilges, and some into the top of the tanks.

Q. When it came through the bilges, didn't it go through the sluice into the engine-room? A. Yes,

718 but there wouldn't be enough to travel through there without there was water put on it; not enough to dissolve, this last voyage, without there was water on it.

Q. Did you see any sugar drainage come these last two voyages into the engine-room? A. I never saw any sugar drainage inside the limbers on the last voyage, until the holds were washed out. We don't take the limber boards up until the hold is washed out, because all the dirt gets down, and we have to wash it up out of the limbers. We have to pump the limbers out and the dirt that is left in we clean that afterwards.

719 By Mr. Kirlin:

Q. In other words, you wash the hold down first and the limbers afterwards? A. Yes, sir.

Q. And by washing the hold you mean the floor on top of the limbers without taking the limber boards up? A. Yes.

By Mr. Black:

Q. Were any of these limber boards taken off the tops of the limbers before this sugar was stowed on this voyage where the molasses got broken up? A. No, they were down.

Q. How could that sugar and stuff which you found in those bilges or limbers get there if those
720 limber boards were down? A. It would go down through the openings in the boards.

Q. How large were those openings to let sugar go down? A. Some of them, I couldn't say whether half an inch or an eighth; they are not tight.

Q. They would let sugar go through? A. Yes, sir; they would let sugar drain through.

Q. And they would let this broken cement go through, wouldn't they? A. Couldn't let that through if there was none in the hold.

Q. If it was in the hold, though, it would come through? A. If there was any in there; it was cleaned out before we left New York.

Q. I didn't ask you that. I asked you if those holes would have let the cement and broken stuff that was in the lower hold go down into the limbers; if the holes were large enough? A. Yes, it could go down. 721

By Mr. Kirlin:

Q. How warm was it when you were loading the sugar and molasses down in Porto Rico on the voyage when the damage occurred? A. I felt it hotter than I felt it this last voyage.

Q. About where was the thermometer? A. I never noted that.

Q. Was it summer weather? A. Yes, sir; it was red hot. 722

Q. When you got up here it wasn't summer weather, was it? A. No, it was cold; just as cold as in the English Channel.

Q. You said ice on deck when you got here? A. Ice; when we arrived from that voyage the tarpaulins was smothered with ice. We had bad weather the night before we came in; it came on to blow a strong gale.

Q. And snow and ice? A. The water from the ship was thrown over and froze.

Q. Froze on deck? A. Yes.

By Mr. Black:

Q. All this drainage and stuff in this lower hold of No. 2 was not frozen, was it? A. I wasn't down in the hold then. 723

Q. You saw it down there? A. I didn't see it until after it was out.

Q. It wasn't frozen then, was it—that stuff? A. No; I didn't see any ice down in the hold, sir.

By Mr. Parkin:

Q. Did you say it was you or the first mate called the attention of Mr. Maloney to the fact that some of the casks were not properly stowed in the be-

724 tween-decks? A. I told the mate, the first officer; he called Mr. Maloney's attention to it.

By Mr. Black:

Q. And then what happened? A. Mr. Maloney went down and had a look around, and said it was all right.

Q. Did your mate go down, too? A. The mate was down with him, too; the mate was down in the hold when he called Mr. Maloney's attention to it; Mr. Maloney had just come aboard and was looking over the hatchway; I was tallying the stuff in.

Q. And he called Mr. Maloney's attention to the fact that it wasn't properly stowed in the between-
725 decks? A. It wasn't properly secured.

Q. Mr. Maloney didn't put any more dunnage in? A. The men that night went and put some wood in behind it; I don't know how much they put in; anything they could get hold of, wood.

Q. Did you see it after this dunnage wood had been put in? A. Yes; I saw some parts of it where they had dropped the dunnage wood in; the night after his attention was called about it we shifted from one port to another and the casks was moving about like that, so the next morning we told him about it again and he sent his men down to secure it again.

Q. And it was secured, wasn't it? A. Yes, sir.

726

By Mr. Parkin:

Q. But it broke away, didn't it, in the weather? A. It broke away, yes, sir; it had moved and turned some of the casks over so that they ran out.

Q. Some of them broke away entirely—got all smashed to pieces—didn't they? A. Yes, sir.

Q. They couldn't have been fastened very tightly if they did that? A. If one tier get adrift the casks in the front tier get broke; all the tiers behind that would go adrift, too. Because I think, what we pass for in England, when we pass an examination,

those casks ought to be secured with wedge-shape quoins, which our casks aboard there was never secured with. I know if I was in a sailing ship and I had the stowage of the cargo as mate of the ship, I would secure them with wedge-shape quoins. We have no chance to have them, because we have nothing to say with the stowing of the cargo. 727

Q. You have nothing to say about the stowing of the cargo yourself? A. No, sir; only tallying it in.

Q. You are taught in England to secure it with wedge shape quions? A. Yes, sir; every cask of sugar and molasses that is put in the ship.

Q. That wasn't done? A. That wasn't done.

728

By Mr. Black:

Q. You have seen a good many cargoes of sugar stowed since this way? A. Yes, sir.

Q. All stowed the same way? A. Just the same way as they were that voyage.

Q. That is the customary way of stowing at that island? A. I couldn't say whether that is the customary way or not; they did put them in.

Q. You don't know of any different custom from what is used there? A. No, sir.

Q. All the casks that you saw stowed were stowed like these, weren't they? A. In our ship they were stowed securer these last two voyages than they were the first. 729

Q. What casks were stowed securer? A. The sugar casks.

Q. In what way? A. There was more pains taken with them to put them in. There wasn't so much broken stowage left.

720 U. S. DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

JOSÉ BREGARO,
Libellant,

AGAINST

The Steamship "CENTURION,"
The New York and Porto Rico Company,
Respondent.

731 THE AMERICAN SUGAR REFINING COMPANY

AGAINST

SAME.

NEW YORK, May 31, 1893.

DEPOSITIONS of witnesses, taken on behalf of the respondent at the office of Mr. George A. Black, No. 44 Pine street, this day.

APPEARANCES:

732 Mr. W. M. MACFARLAND and Mr. W. PARKIN, for the Libellants.
Mr. GEORGE A. BLACK, for the Respondent.
Mr. J. P. KIRLIN, for the Claimants.

MICHAEL E. BUTLER, a witness called on behalf of the respondents, being duly sworn, testified as follows:

DIRECT-EXAMINATION by Mr. Black:

Q. What is your business? A. Stevedore.

Q. How long have you been stevedore? A. Ever since I was twelve years old; that is, 26 years ago.

Q. How long have you been working in New York as stevedore? A. All that time. 733

Q. About how long boss stevedore? A. I might say all that time, too.

Q. Since you were twelve years old? A. I started in with my father, and so I was really looked on as boss when he was away.

Q. Did you have a firm? A. Yes.

Q What was the firm? A. E. Butler & Sons.

Q. Have you been in the habit of unloading vessels loaded with sugar and molasses? A. Yes, sir.

Q. Did you have anything to do with the discarge of the cargo of cement and chemicals which the *Centurion* brought to New York in January, 1893? A. No, sir. 734

Q. Did you have anything to do with the vessel immediately after that cargo had been discharged? A. Yes, sir; furnished men to clean up the holds.

Q. And who employed you to do that? A. The captain of the ship.

Q. Did you go on board yourself at that time? A. Yes, sir.

Q. What did you find in her No. 2 hold and No. 2 between-decks? A. Well, I found a little of what-you-may-call-it.

Q. Barytes? A. Yes, and bleaching powder in bulk; and it looked to me as if it was Portland cement, but all we could see was staves and barrels.

Q. And the powder itself? A. Yes, and coal dust. 735

Q. In what part of the No. 2 section of the vessel was the barytes in bulk; in the between-decks or lower hold? A. You mean what comprised the cargo?

Q. Yes. A. I could not tell that.

Q. You don't understand my question. Where was it you found those chemicals? A. There were some in barrels and some in bulk.

Q. It was all discharged when you got on board? A. Yes, sir.

Q. And you saw something there? A. Yes, sir.

736 Q. Could you tell what it was? A. Nothing more than they said it was barytes.

Q. Where did you find the barytes? A. Under the No. 2 hatch, lower hold.

Q. Where was the bleaching powder? A. In the forward end of the No. 2 hold, some of it, and some of it right abreast of the No. 2 hatch.

A. Lower hold? A. Yes, sir.

Q. Where did you find the cement? A. The cement seemed to me to be scattered all about in the between-decks and in the lower hold.

Q. Did you find any remnants of cargo or dust of chemicals in the No. 2 lower hold? A. No, sir; there didn't appear to be anything there; I don't think
737 there was any cargo in there.

Q. You furnished men to the master to clean up the vessel; what kind of cleaning up was done? A. Well, we overhauled the dunnage and swept it up as clean as we could.

Q. Well, was the vessel any more than swept up? A. That is all.

Q. Did you or your men take up any portion of the floor which was laid in the lower hold? A. None whatever.

Q. Did you or your men have anthing to do with cleaning out the bilges of the lower hold? A. No, sir.

Q. This floor of the lower hold is laid on top of the
738 ballast tanks, right across the whole space between the bilges? A. Yes.

By Mr. Park n:

Q. Right up to the sides of the ship? A. No, sir. There is a space between the ballast tank; it is tapering that way (indicating), and there is a little space, what we call limbers.

By Mr. Black:

Q. The limbers formed the floor, didn't they, at the bilges? A. Yes. The floor was perfectly level,

Q. And was there any portion of the frames, till 739
you came to the bilges, uncovered? A. Well, just where they spread out a little, about an inch or an inch and a half, right at the extreme wing.

Q. Did you have anything to do with the discharge of the cargo of molasses and sugar which came on the *Centurion* in February of this year? A. Yes, sir.

Q. What portion of this last cargo did you have to discharge? A. The molasses portion, and whatever little annatto seed and coffee there was.

Q. Whereabouts was the vessel when you discharged the molasses and seed? A. Robinson's Stores.

Q. Did you go on board of her before she reached 740
Robinson's Stores? A. No, sir.

Q. When she reached Robinson's Stores was all her sugar out? A. Yes, sir.

Q. Was there anything in her lower No. 2 hold at that time? A. Only the hogsheads of drainings that had been baled up.

Q. After she arrived at Robinson's Stores did they continue baling out the drainings? A. Yes, sir.

Q. From which hold? A. From No. 2, 1 and 3.

Q. Who did the work of baling out that drainings? A. McCormick and his son, and they had several subordinates there.

Q. All her sugar, as I understand, had then been taken out? A. Yes, sir. 741

Q. What was there in the No. 2 between-decks when you got to work on her? A. There was a portion of the molasses and some ginger.

Q. By saying a portion of the molasses, do you mean to say any part had been discharged at some other place? A. No, sir; some was in another hold; the other portion.

Q. Which hold was that in? A. No. 3.

Q. Between-decks? A. Yes, sir.

Q. Were any hogsheads of molasses broken in No. 2? A. Yes, sir.

742 Q. Were any hogsheads of molasses broken in No. 3? A. No, sir.

Q. Did you find any other broken cargo in No. 2 than molasses? A. Yes, sir; there was a few packages of ginger broken up, probably seven or eight.

Q. Have you got any book which will show the number of hogsheads of molasses you discharged from No. 2, or can you remember? A. No. I can recollect pretty nearly, about 130 to 140 that is broken and what was whole, taken together.

Q. How many were broken and how many whole, A. I think in that hold was in the neighborhood of 75 that were partly out and completely broken up, and some with the heads off.

743 Q. And the balance was in good order? A. They were in good order, inasmuch as there was not more than ten to fifteen gallons out of some of them.

Q. How many were completely broken up? A. Probably forty of them.

Q. And out of the No. 3 between-decks, how many hogsheads, more or less, did you take out? A. I think we took about 110 or 115.

Q. And of that lot how many were there not broken? A. There was none broken, but there were some light.

Q. Were there any completely empty? A. I think there was two or three.

Q. What was the condition of the stowage in No.
744 3 between-decks of this molasses; had it been shifted or broken up, or was it in its original position as it was stowed? A. Some had worked down a little, bung down.

Q. Otherwise had they changed their positions than by revolving? A. Only one or two.

Q. The tiers were in general intact? A. Yes.

Q. Did you notice the stowage of the molasses? A. Yes.

Q. What was the character and kind of stowage of that molasses which you found in No. 3 that had not altered its position? A. They were all bung up.

Q. How about being properly dunnaged? A. Well chocked. 745

Q. Will you describe the character of the dunnage, of the kinds of blocks or chocks or quoins which you saw used for stowing that molasses? A. For chocking purposes they used the regular three feet dunnage wood, and for quoins they had one-inch pieces about 14 inches long.

Q. What was the character of the quoins and dunnage used in stowing this molasses, as compared with the character of quoins and dunnage you have ordinarily seen in the stowage of similar cargoes? A. The same dunnage as always used and the same kind of quoins.

Q. In your experience as stevedore, have you often discharged cargoes of molasses and sugar? A. Yes. 746

Q. Have you experience as to the way in which molasses acts on a voyage when a vessel has a pretty heavy time of it and rolls considerably, as to whether the molasses remains in position or turns round? A. We frequently find hogsheads on a voyage work bung down.

Q. That is a frequent occurrence, is it? A. Yes, sir.

Q. What was the character of dunnage and quoins which you found in No. 2 between decks, compared with the kind you found in No. 3? A. Just the same. 747

Q. Did you see the kind of dunnage and quoins used in the stowage of hogsheads of sugar? A. Yes, sir.

Q. What was the character of that dunnage? A. The same character as that used in molasses stowage.

Q. And comparing that with what you have usually seen in discharging similar cargoes, what would you have to say about it? A. Exactly like all dunnage used in that way.

Q. Have you known of molasses being carried in the between-decks of steamers on other occasions than this? A. Yes, sir.

748 Q. How frequently? A. I can recall two or three instances. We had it in the between-decks of the steamer *Camarata*, and we had it in the steamer *Venetia*, and we had it in the between-decks on the *San Marco*.

Q. In your experience as a stevedore, is there any reason why molasses should not be stowed in the between-decks, if that between-decks is steel, or an iron deck with hatches with proper coamings to them, and those hatches properly caulked and secured? A. I don't know of any reason; no, sir.

Q. When the *Centurion* arrived at Robinson's Stores, did she have any list? A. Yes, sir; pretty strong list to starboard.

749 Q. Did you find any reason for that list after all her sugar had been taken out of her? A. No reason, any more than some of these hogsheads of molasses were fuller on one side of the between-decks than the other.

Q. Did you see her limbers taken out? A. Yes, sir, I think I did in No. 1; I don't know as I noticed them in No. 2.

Q. Did you notice any difference in the quantity of material contained in the limbers on the port side, compared with the limbers on the starboard side; was one fuller than the other? A. The one they found fuller was on the starboard side.

Q. And which side was the list on? A. The star-
750 board side.

Q. Were you in the lower hold of this vessel after the sugar had been taken out and the drainings had all been taken out in No. 2? A. No, sir.

Q. When you speak of molasses working and revolving and getting bung down, what way is there that the molasses can get out if the bung is in? A. Through the vent.

Q. Are those vents always left in molasses cargo? A. They are left there.

Q. What for? A. For fermentation.

Q. Allowing escape of fermentation? A. Yes, sir.

Q. In your experience is there any proportion of barrels which you can say will turn over on a voyage, or will it depend on the character of the voyage? A. Depends on the character of the voyage. 751

Q. Is there any proportion that always ferments out? A. Unless there is work on the voyage there is very little fermentation.

Q. You speak of there being ten or fifteen gallons out of these hogsheads by fermentation; is that more than, or the usual quantity? A. They never fill a cask more than ten gallons from the top, so that if it fermented five ——

Q. Then you would expect to find fifteen out? A. In that neighborhood.

752

By Mr. Kirlin:

Q. That means ten originally short and five fermented out? A. Yes.

By Mr. Black:

Q. Were any of the molasses casks in the No. 2 between-decks in their original beds, or did they all appear to have been shifted round and started? A. They all appeared to be more or less moved.

Q. Were there any standing on end? A. Yes, sir.

Q. Were any of the casks broken or the bilges or staves knocked in? A. Yes. 753

Q. Were any of the heads out? A. Yes, sir.

Q. Were any of them bung down in the No. 2 hold? A. Yes, sir.

Q. Which hold, if any, was McCormick working on when you first commenced discharging this molasses? A. He started about the same time we did, to bale out; about the same time that she got to Robinson's Stores, and he started on No. 2.

Q. At that time you said there were hogsheads filled with bailings in No. 2? A. Yes.

Q. Do you know how many hogsheads of balings

754 he took out of No. 2? A. I don't know exactly; should judge about twenty-five to thirty.

Q. Do you know how many he took out of No. 1? A. I think in the neighborhood of twenty-five; I don't know exactly.

Q. Did you see him start baling in No. 3, or had he already finished there when you went aboard? A. I think when he finished No. 2 he got some more out of No. 3.

Q. Do you know how many he got out of No. 3? A. About a dozen hogsheads, I think.

Q. Would he know any better than you? A. Oh, yes; he would know exactly what he took out of each hold; I hoisted 'em out.

755 Q. Did you see any signs of the molasses having accumulated in the between-decks of No. 2? A. No, sir.

Q. Did you see any marks upon the side in any place, showing it had been there—loose molasses? A. No; there was some old mats there, showing where there had been a kind of moisture of the molasses on the starboard side.

Q. Does not molasses when it has been on board a vessel dry on the battens there and leave marks? A. There did not appear to be any.

Q. About these steamers which you have mentioned which had molasses in between-decks, did you only mention those as those you remember, or

756 do you know there are others besides? A. There were others, but I can't recall them.

Q. During how many years of your experience as stevedore have you seen molasses carried in between-decks of steamers? A. We have been handling steamers about six years.

Q. Was or was not the molasses stowed in the *Centurion* so you could see what its original stowage was in the No. 3, and was that stowage as you have seen it stowed in other vessels? A. Yes, sir.

Q. Were or were not the quoins similar to the quoins you have seen used in other vessels carrying molasses? A. Very similar.

CROSS-EXAMINATION by Mr. MacFarland: 757

Q. If I understand you, you saw the casks of molasses in No. 3 in the same position in which they had arrived here? A. Yes, sir.

Q. Can you explain why the hogsheads in No. 3 did not shift, break, spill their contents, while those in No. 2 did? A. No, sir; I cannot.

Q. There is no satisfactory explanation, is there? A. No, sir; not that I know of, sir.

Q. You say you have known two or three cases in which hogsheads of molasses have been carried in the between-decks? A. Yes, sir.

Q. Sugar underneath? A. Sugar underneath; yes, sir.

Q. And the same way that molasses was carried 758
in this case? A. Yes, sir.

Q. You say that more or less molasses leaves the casks by the process of fermentation during the voyage? A. Provided there is any motion.

By Mr. Parkin:

Q. Motion of the casks? A. Yes, sir.

By Mr. MacFarland:

Q. That is a fact, therefore, that should be taken into account? A. Yes, I think so.

Q. That is a thing likely to happen? A. Yes, sir.

Q. In stowing molasses between-decks above 759
sugar, is it at all necessary for safety that the decks should be tight? A. I should judge so; yes, sir.

Q. In point of fact, they should be perfectly tight, should they not, sir? A. Yes, sir.

Q. That stands to reason, does it not? A. Yes, sir.

Q. Therefore it ought always to be somebody's duty to see they are perfectly tight before putting molasses on board on top of sugar? A. Yes, sir; I should think so.

760 By Mr. Kirlin:

Q. Who discharged the cargo of the vessel in New York before you were employed to clean up? A. Youngren & Monaghan.

Q. Had they taken out all of the cargo before you went on board? A. Yes, sir.

Q. When you got there you found nothing except—— A. Except the remnants of the cargo.

Q. What were they? A. Bleaching powder, as I judge it was, these barytes, because the chief officer told me he had barytes in No. 2.

Q. What does this barytes look like? A. Like a clay.

Q. Powder? A. What we had was some in pow-
761 der and some in clay.

Q. Some in clay? A. Yes, sir. Of course, I could not judge only what they told me was there.

Q. I believe you said there was none of that in the No. 2 lower hold? A. Of the barytes? Oh, yes, in No. 2.

Q. In what part of the hold? A. Right under the hatch.

Q. How much was there? A. Well, between the bleaching powder and the coal dust, and what was left of the barytes and the cement, I think we hoisted out about five or six cartloads.

Q. You say you found broken barrels and staves? A. Yes, sir.

762 Q. Where were those? A. In the between-decks and some in the lower hold. I couldn't judge where the cement was stowed.

Q. Did you find any cement in the lower hold of No. 2? A. No, only staves, and perhaps some of the powder.

Q. Then, as I understand, all you found in the lower hold was barytes and the staves? A. And the bleaching powder and coal dust.

Q. You didn't find any considerable quantity of coal dust, did you? A. The coal dust was abaft of the hatch.

Q. Near the bulkhead? A. Near the engine bulk- 763
head.

Q. How much bleaching powder did you find? A. The most of it was bleaching powder.

Q. That comes in iron casks, doesn't it? A. No, sir; wooden casks with what we call iron chines or iron hoops on it.

Q. You gathered up all the powder and swept up good and clean? A. Yes, sir.

Q. And you took the ship and cleaned her out for the Porto Rico Company? A. Yes, sir.

Q. And you put down the usual dunnage and mats? A. Yes; miscellaneous cargo.

Q. And after you had cleaned and arranged your dunnage the ship was in good, clean and suitable con- 764
dition for the voyage to Porto Rico? A. We couldn't tell what the limbers were, but as far as the top of the platform, it was all right.

Q. Was there any cargo in the lower No. 2 hold when the ship came to Robinson's Stores? A. None, only the hogsheads of drainings I mentioned.

Q. You could not see how the molasses had got down from the between decks to the lower hold, could you? A. No, sir.

Q. You did not know whether it came through the scupper pipes or through the hatches or feeder holes, or how? A. No, sir; I noticed there was feeder holes there.

Q. You saw those, did you? A. Yes, sir; well, I 765
didn't notice them that time, but I noticed them there since.

Q. Was there any molasses stowed in the No. 1 hold at all? A. No, sir.

Q. Nothing but sugar? A. Sugar, and I think fifty bags of annatto seed.

Q. Was there sugar in all the ground tiers No. 1 hold? A. I presume so; there was nothing else when we got there.

Q. When you got there, there was no sugar? A. No, sir.

766 Q. Nothing but those molasses, which they were gathering up? A. Yes, sir.

Q. Did you notice any of the bungs out of any of the hogsheads—the bungs had worked down, you said, several times? A. I didn't notice particulaly whether they were out of any of them or not.

Q. How large were the vent holes? A. Well, my thumb probably would fill up the biggest one.

Q. Do I understand all the hogsheads have holes in them about three-quarters of an inch in diameter? A. Two, besides the bung hole.

Q. The result of that would be, if a hogshead rolled over, even half way, a large part of the molasses would inevitably escape? A. Yes, sir.

767 Q. Molasses is rather a risky cargo to carry under any circumstances, I should imagine? A. Yes, sir.

Q. How many cargoes have you discharged in which molasses was a part, since you have been in this Porto Rico business? A. You mean steam and sail combined.

Q. Yes? A. I suppose I can recall three steamers I handled; I suppose I handled twenty or thirty sailing vessels.

Q. Are three steamers all you can remember that had molasses on board? A. Yes, sir.

Q. Any port? A. We had one ship went to Boston, but I don't know the name.

Q. And have there been damages in such cases?

768 A. No, sir; I have discharged vessels also that had molasses stowed directly on top of the sugar.

Q. Stowed in the same way that this cargo was stowed? A. Yes.

Q. Secured in the same way? A. Yes.

Q. The same kind of dunnage? A. Yes, sir.

Q. Is there any partition between the No. 1 and No. 2 holds in the *Centurion?* A. Yes, sir.

Q. What is it, of iron or wood? A. Wood.

Q. Was that up on this occasion? A. Yes, sir.

Q. And when you said they took twenty-five hogsheads from No. 1, I suppose they got it through the No. 1 hatchway? A. Yes, sir.

Q. And through the No. 2 hatchway they took up about twenty-five or thirty? A. Yes, sir. 769

Q. And through the No. 3 hatchway about a dozen? A. Yes, sir.

Q. The hogsheads were the same size as those in which the molasses originally stood? A. Yes.

Q. And that represented the drainage, breakage and leakage? A. Yes, sir.

Q. In all about between sixty-five and seventy hogsheads? A. Yes, sir.

Q. That was a very large and unusual quantity of drainage to find, was it not, in a lot of two hundred and fifty hogsheads? A. That was not all; they put some up in the refinery, too.

Q. That was a very unusual quantity, was it not? 770
A. I think we had as high as forty-five hogsheads in a full sugar cargo; you see the first of the season's there is quite a lot of drainings.

Q. This was early in the season, was it? A. Yes, when we expect a lot of drainings.

Q. You think a large part of this was drainage from the hogsheads of sugar, in your judgment? A. I didn't see it.

Q. Is there any difference in appearance of drainage from the sugar and that from molasses? A. The sugar drainage is much thicker and of a heavier character than molasses.

Q. Now, Mr. Butler, do you think that molasses getting down on the sugar would have a tendency 771
to wash the sugar out of the hogsheads or not? A. Well, I have often seen where hogsheads of sugar would stand eighteen inches—you could notice it on the heads of the hogsheads—hogsheads would stand that far in the drainage of the sugar; when a hogshead like that would come on the deck it would weigh heavier than the hogsheads on the extreme top.

Q. That would indicate that molasses alone would not wash the sugar out? A. That is my argument.

Q. And if you find a large number of hogsheads short of sugar, when there was no molasses down

772 amongst it, it would be your inference that some had been drained out instead of washed out? A. Yes, sir.

Q. You say drainage from sugar is larger generally in the early part of the season—that is, Porto Rico—in the early season? A. Yes, sir; our last cargo, I think, was a late cargo, and she only had a half-dozen hogsheads of drainings; I don't think she had that much.

Q. You mean the one she discharged about a week ago? A. Yes.

Q. Had she any molasses on board that voyage? A. No, sir.

773 By Mr. MacFarland:

Q. Mr. Butler, you don't know anything about the drainage of the sugar in this particular case, do you? A. No, sir.

Q. Nothing whatever? A. No.

Q. You are simply saying, and I suppose only mean, that there is always more or less drainage from sugar? A. Yes, sir, in the early part of the season.

Q. And it is rather more in the early part of the season; that is all you mean to say? A. Yes, that is all I meant.

Q. You did not mean to say or wish us to understand that if you break a good many hogsheads of
774 molasses and let it all run down on to the sugar, that it would not do any harm to the sugar, do you—you did not mean that? A. It would depend on what outlet it would find—if it could work its way down.

Q. If it did not find any outlet, would it do any harm to the sugar? A. I could not answer that question.

Q. Don't you think it would be likely? A. If you had a good tight hogshead of sugar and molasses struck it, it would find a way off.

Q. If you had thirty or forty hogsheads of molasses in the between-decks, and that the between-

decks were not tight, and that the contents of those 775
hogsheads of molasses would flow down amongst the sugar and on the sugar, do you think it would not do the sugar any harm? A. As I said, if it struck tight hogsheads of sugar, it would work its way clear without injuring the sugar.

Q. Then you think the molasses could not get into the hogsheads of sugar? A. Unless the hogsheads of sugar were broken.

Q. But the molasses would not have any tendency to break into any hogsheads of sugar? A. No; the weight of molasses dripping down would not.

Q. I mean the contents of thirty or forty or sixty hogsheads of molasses emptied on the between-decks and flowing down from the between-decks—some 776
way or other, all that molasses—on to the sugar; I ask you whether you think it would do the sugar any harm, and you say it would not? A. Not unless the hogsheads of sugar were broken.

Q. What would become of that molasses? A. Well, in this case it found no outlet.

Q. I don't ask about this case, but in any case? A. Usually it works through sluices and down into the limbers, and they pump it out.

Q. And then the molasses would flow off? A. Yes, sir.

Q. And that is the reason, you think, it would not do the sugar any harm. A. I claim if the hogsheads of sugar were tight and the molasses flowed 777
on it, I claim it would find its way out.

Q. You mean to say if the molasses struck the sugar it would work its way out from the sugar, and it would not hurt the sugar much? A. And even if it lay in the sugar it wouldn't hurt.

Q. We will suppose there is no way for the molasses to get out of the lower hold at all, and you have got the barrels of sugar in the midst of a great quantity of molasses, the ship, of course, rolling more or less, depending upon the weather, still you think it would not do the sugar any harm, do you? A. Yes, sir.

778 Q. That is your opinion? A. Yes, sir.

Q. Have you had any experience of such a case? A. No more than the hogsheads——

Q. Have you ever had any experience of such a case as I have been talking about? A. Yes, sir; I have seen hogsheads of sugar on the ground tier of a vessel with a drainage of molasses over the top.

Q. Have you ever had a case of the contents of thirty or forty hogsheads of molasses being emptied in the hold upon several hundred hogsheads of sugar —have you ever seen that case? A. No, sir; not as extensive as that.

Q. Then you can't speak from experience as to how molasses and sugar would get on together
779 under those circumstances, can you? A. No more than what I have mentioned; that I have seen a ground tier of hogsheads of sugar covered with molasses.

Q. Haven't you just said you have not had any such case as I have put to you? A. Not as extensive.

Q. What you mean to say you have seen is molasses which from fermentation drains more or less from casks, in connection with hogsheads of sugar; that is what you mean to say so far, is it not? A. I don't know; you get me mixed up.

Q. I am afraid you are mixing yourself up. We will take first a cask of molasses? A. Yes, sir.

780 Q. With its vents, and it ferments, and some of it drains out? A. Yes, sir.

Q. Some of that drainage from the cask through fermentation gets around a hogshead of sugar; do you understand? A. Yes, sir.

Q. The drainage you say would not hurt the sugar? A. Yes, sir.

Q. And that is all you have meant to say, is not it? A. That is all I have said.

Q. And that is all you have meant us to understand? A. Yes.

Q. Such a case as the breaking between-decks of a vast quantity of hogsheads of molasses and getting

their contents on a large quantity of sugar you have never had, you have told me? A. No, sir. 781

By Mr. Parkin:

Q. This dunnage, Mr. Butler, you speak of, you say is three feet planks? A. No; three foot pine wood.

Q. And the chocks are an inch? A. The quoins are an inch thick, fourteen inches long and three inches wide.

Q. Those are pieces of board? A. Yes, sir.

REDIRECT by Mr. Black:

Q. You speak of not knowing why the molasses in No. 2 got adrift more than that in No. 3? A. No, sir. 782

Q. Do you know whether a cask of molasses which has turned over and leaked out is as able to support the pressure of the other casks when the vessel leans over as a cask that is full? A. I know it is not.

Q. And if one of those casks had turned over in No. 2, and the pressure of the other casks came on it, what would happen? A. That would collapse that cask and start the whole tier.

Q. And that might happen in No. 2, and not in No. 3? A. That is what perhaps happened.

RECROSS by Mr. MacFarland:

783

Q. Why should it happen in No. 2, and not in No. 3? A. Because the tiers in No. 2 were more uniform than No. 3; there were not so many hogsheads in No. 3, but they had coamings to the hatch to rest against.

Q. Do you mean to say the molasses in No. 2 was not stowed as well as in No. 3? A. Yes, sir; it was stowed equally as well, but the tiers were more uniform and ran from side to side; there were five hogsheads each side, ten across; in No. 3 there were stanchions to support them. When that vessel was

784 lying on her beam ends there was a weight of nine hogsheads on one, in the wing.

Q. The hogsheads in No. 2 ought to have been properly supported? A. They were.

Q. How do you know? A. There was lots of dunnage gave evidence that they were properly supported, but the ground tiers, or the wing hogsheads, were gone.

Q. There was dunnage enough to protect them? A. Yes, sir. But the wing hogsheads on the ground tier were all gone.

Q. You did not see them? A. No, sir.

Q. All you mean is, there was sufficient dunnage to protect them, properly used? A. Yes.

785 Q. If it had been properly used and these hogsheads in No. 2 had been properly stowed, why then there was not any more reason why they should break in No. 2 than in No. 3? A. Not more than what I have mentioned; there was more pressure in No. 2 on the hogsheads than in No. 3.

Q. Then you would have to stow and use dunnage with reference to that extra pressure? A. Well, with two tiers of hogsheads full, laying across, you don't require any dunnage.

Q. But you have to use dunnage and stow in every respect according to the danger? A. Yes.

Q. Just in proportion? A. Yes, sir.

Q. So if there was more danger of things break-
786 ing and cargo shifting in No. 2 than in No. 3, you would have to be more careful? A. Yes, but if you can chock sugar with itself, it is better.

Q. But I am saying, where the greater danger is the greater the care must be; am I right? A. Yes, sir.

Q. Then if there was more danger, in consequence of the way the hogsheads were put in No. 2, of an accident happening, than there was in consequence of the way they were put in No. 3, you would have to be more careful than you were about your dunnage and stowage in No. 2? A. Yes, sir.

By Mr. Black: 787

Q. When you find a vessel like this, with a difference in the way of coamings or stanchions in No. 2 and No. 3 holds, would that make any difference to her if the vessel got on her beam ends? A. No, sir.

Q. You don't expect such things to happen? A. No, sir.

Q. Do you mean to say if No. 3 had hatch coamings for the hogsheads to rest against, would you put stanchions to take that place in No. 2? A. No, sir.

By Mr. MacFarland:

788

Q. When a vessel makes such a voyage as this in winter, she must expect more or less rough weather, I suppose? A. Yes, sir.

Q. And expecting it, should provide against the consequences of it? A. Yes, sir.

Q. Now, if you could not stow molasses in a certain hold like hold No. 2, for example, so that it would be safe, according to your best judgment—so that it would be safe in heavy weather—you would not put it there at all, would you? A. If I didn't think it was safe, no.

Q. And the molasses ought to have been stowed so as to be just as safe in one hold as the other, ought it not? A. Yes, sir.

789

By Mr. Parkin:

Q. Mr. Butler, are the comings of hatch 1 in No. 2 higher than they are in No. 3? A. I think they are the same height.

By Mr. Black:

Q. Do you anticipate, in stowing a vessel, she is going to get on her beam ends? A. No, sir.

Q. Do you ever make any provision against that in your stowing? A. We are supposed to have everything well stowed and secure.

790 Q. Against any ordinary kind of weather? A. Yes, sir.

By Mr. MacFarland:

Q. What do you mean by any ordinary kind of weather; do you mean rough weather? A. Yes, sir; ordinary rough weather. No hurricanes, though.

Q. Do you mean to provide for everything short of a hurricane? A. Yes.

Q. You can't very well provide against a hurricane, can you; you can only do the best you can? A. Yes.

Q. But you can never expect to be entirely safe
791 against it? A. No, sir.

Q. Except for some uncommon thing like a hurricane, you do provide? A. Yes.

Q. What do you understand by a vessel getting on her beam ends, that she has a little tilt? A. No, sir; if you put a beam on end, it is on end.

EDWARD S. SCOTT, a witness called on behalf of the respondents, being duly sworn, testifies as follows:

Q. What is your business? A. Stevedore and contractor, and port warden.

Q. Port warden of New York, of the port of New
792 York? A. Yes, sir.

Q. How long have you been stevedore? A. Five or six years.

Q. Did you have anything to do with discharging of the steamer *Centurion* in her voyage to New York in February, 1893, when she had a cargo of sugar and molasses on board? A. Yes, sir.

Q. Where was she when you discharged what you did of her? A. At the sugar refinery, foot of South Fourth street, Williamsburgh.

Q. The American Sugar Refining Company? A. Yes, sir.

Q. And what part of her cargo did you there dis-

charge? A. Her bag sugar and cask sugar, hogs- 793
heads.

Q. Do you remember what the condition of the vessel was when she arrived at her dock? A. Yes, sir.

Q. What was it? A. She had a list to starboard.

Q. How much of a lit? A. Well, considerable list.

Q. Will you give me an idea of about how many feet lower down the starboard side was than the port side? A. About a foot or a foot and a half.

Q. Which was the side next the dock as you discharged her? A. Starboard side.

Q. What part of her cargo did you take out first? A. The bag sugar from the top. 794

Q. In which deck. A. From the between-decks.

Q. Forward or aft? A. Both.

Q. What condition was that bag sugar in? A. Well, some of it in the No. 2 hatch was damaged by molasses, and a few of the bags showed salt water damage.

Q. About how many bags in No. 2 were damaged by molasses? A. Something over two hundred, I guess.

Q. What part of that No. 2 was this bag sugar stowed in? A. Square of the hatch.

Q. And where, with reference to the hogsheads of molasses, forward or aft of them? A. Both sides, and aft in the wings, each side. 795

Q. In No. 2? A. No. 2, yes; the bags were in a square of the hatch, and the molasses were stowed each side in the wings of the between decks.

Q. Now, what cargo did you commence taking out after taking the bags out? A. The hogsheads.

Q. Where did you take them from? A. Out of the four hatches.

Q. Number 1 or 2? A. Numbers 1, 2, 3 and 4.

Q. Oh, the four hatches. I thought you were referring to the fore hatches. A. No, sir.

Q. Did you find any of the hogsheads of sugar damaged? A. Yes.

796 Q. Out of which hold did those damaged hogsheads come? A. Number 1.

Q. And what was the character of the damage? A. Well, they seemed to be damaged by drainings.

Q. Were any of the hogsheads broken? A. Some of the heads out.

Q. Were the contents gone of any? A. Yes, sir.

Q. What number of hogsheads of sugar can you state had contents out and heads broken? A. Well, I saw a few with the heads out, but some of the casks which we had landed had both heads in and the contents drained out.

Q. Were those the casks that came from the upper or lower tiers? A. The ground tiers.

797 Q. How many tiers were there in the lower hold of this *Centurion*, of sugar? A. I should judge four or five tiers.

Q. What was on the ground tier in addition to the hogsheads of sugar which were partially empty or wholly empty, any liquid? A. Drainings.

Q. How high up did this draining come on this ground tier? A. Eighteen or twenty inches.

Q. And as the vessel had her list, how high did it come at the starboard side, or was it the same height all the way across? A. It showed more on the starboard side.

Q. Was there any sign of damage on the port side; in other words, did the cargo of sugar lie in any

798 quantity of fluid drainings on the port side? A. Considerable on the port side.

Q. And you said, I think, this came out of No. 1 hatch? A. Yes.

Q. What was the condition of the hogsheads of sugar in the No. 2 hatch? A. What I saw was all right; they hadn't got down to the lower tiers.

Q. You don't know the condition of the lower tiers as they came out? A. No, sir.

Q. Did you discharge the cargo from No. 3 hatch? A. Yes, sir.

Q. What was the condition of that sugar in No. 3? A. All right.

Q. And in No. 4? A. All right. 799

Q. Was any of the bag sugar from No. 4 or No. 3, between-decks damaged? A. I don't think so.

Q. The only damaged bag sugar came out of No. 2? A. Yes, sir.

Q. And the character of those bags was what as to damage? A. Molasses damage, and a few of the bags had indications of salt water.

Q. How many were salt water damaged? A. Not many.

Q. What was the character of molasses damage to those bags? A. The ends of the bags where the molasses had run over them, showed the stain of molasses.

Q. Not all over the bag? A. No, on the end. 800

Q. And were those ends exterior, the exterior ends of the bags as they lay piled in the No. 2 hatch? A. The after portion.

Q. The bags damaged with the molasses were those that came against the molasses? A. They were in the lower hold on top of the sugar casks.

Q. Do you now mean to say the bags that came out of No. 2 were out of the between-decks or lower hold? A. Out of the square of the hatch.

Q. By that you do not mean the between-decks, but just that space? A. Yes; the between-decks hatch coamings.

Q. Did those bags rise above the pile—above the coamings in the between-decks? A. Yes. 801

Q. How high? A. Two or three bags clear of the between-decks.

Q. How high were those coamings? A. Eight or ten inches.

Q. And those bags that you saw damaged with molasses were those above the coamings? A. Below the coamings.

Q. Did you see the condition of the hogsheads of molasses in No. 2 between-decks? A. Yes, sir.

Q. What were they as regards condition? A. Well, I saw a couple of casks headed up, front up, on top of cargo, and it seemed to be all right as far

802 as I could see; we did not disturb any molasses casks there at all.

Q. I am speaking of the No. 2 between-decks, what was the condition of that; were the molasses casks in there all sound or were they broken up? A. I saw two or three casks broken.

Q. Were they in their original stowage? A. Thrown up on top.

Q. Did you notice the condition of the molasses casks in No. 3 between-decks? A. They seemed to be all right in No. 3.

Q. How long have you been in the habit of handling sugar cargoes? A. Five or six years.

Q. Don't you always find drainings from sugar
803 cargoes? A. If it is what we call "soft" sugar; yes.

Q. That is not centrifugal sugar? A. No.

Q. That is moist? A. Yes.

Q. And in this cargo did you find any drainings from the sugar in any part of the vessel, or couldn't you distinguish it from the molasses? A. No, sir.

Q. Was this centrifugal or wet sugar? A. Wet sugar.

Q. Have you ever seen cargoes of molasses stowed in vessels, or have you ever stowed them yourself? A. I have never stowed them; I have seen a few casks stowed.

Q. What would you say as to the character of the stowage of molasses in No. 3 hold? A. All right.

804 Q. What would you say as to its having the usual kind of quoins, wedges and dunnage? A. The same I have always seen.

Q. And what you saw as to the character of the stowage of the sugar in No. 3 and No. 4 lower holds were the quoins and dunnage generally the same you have been accustomed to see or not? A. Just the same.

Q. You say there was some water damage in No. 2; in which part of the bags was that water damage, on the top or lower tiers? A. There was no particular place; scattered around. Why I took it for salt water damage was, that the sugar had

turned white; it is an indication that salt water must have struck it; just where the bag showed the stain I cut it open and found it showed white. 805

Q. Did you find any damage by water in any other part of the vessel besides the No. 2 between-decks? A. No.

Q. Didn't you notice some stains of water in No. 3 on the sugar? A. The lower hold, yes.

Q. Up against the shaft tunnel? A. Yes.

Q. About how much water did you see in there? A. Two or three inches.

Q. Did you know that was water? A. Yes.

Q. How did you know? A. Tried it.

Q. Tasted it? A. Yes.

Q. And you recognized it, did you? A. Yes. 806

Q. Was that on the port side of the tunnel shaft? A. I think it was the starboard side.

Q. With the list she had, how would it lie against the starboard side of the tunnel shaft? A. Well, I wouldn't say positively about that.

Q. That was on the floor of the lower hold, No. 3? A. Yes, sir.

Q. What became of the vessel after you had taken out the sugar you discharged? A. She went to Robinson's stores, I believe.

Q. And when she went away she had cargo in her? A. The balance of the molasses and a few bags.

807

By Mr. Kirlin:

Q. Mr. Scott, you discharged all the sugar and molasses that came to the refinery? A. All the sugar, but not the molasses.

Q. Don't you import molasses at all? A. No; that is, we discharge it in a cask there if they have a lighter to take it away; we very seldom have molasses.

Q. You receive a good many vessels, of course? A. Yes.

Q. And they are all under your supervision? A. Yes.

808 Q. You, as Port Warden, see the hatches taken out? A. Yes, sir.

Q. And generally have a look at the stowage? A. Yes.

Q. The vessels, where they carry mixed cargoes, do they go to the refinery first? A. Mixed cargoes?

Q. Sugar and molasses? A. I don't know that they make any special case of that; most molasses I have seen in any vessel besides this one was ten or fifteen or twenty-five casks.

Q. Where is it usually stowed? A. In the between-decks, and if I remember right we had one vessel where it was stowed in the lower hold; I would not be positive about that.

809 Q. How many bags do you think were damaged by salt water? A. Something over 100; I have it in the book.

Q. Was it not appreciable? A. No; just slight damaged.

Q. Was any claim made on account of that, do you know? A. I don't think so; I don't think there was enough to make a claim.

Q. That is no part of the claim in this action, is it? A. I don't know.

Q. There was no damage to the hogshead sugar, so far as you saw, from salt water? A. No, sir.

Q. Might not this damage to the bags in the square of the hatchway have occurred from sweat-
810 ing? A. Yes, sir.

Q. When the hatch was open, was there indication of water having come in or under it? A. No, sir.

Q. It appeared to be tight and well battened? A. Yes, sir; well secured.

Q. You have stated that some of the hogsheads in the No. 1 hold were damaged by drainings; what do you mean by that? A. That the contents were partly out, were all out.

Q. You did not mean that the drainings had done any damage; you mean to say that the hogshead

was light from drainage? A. That the hogshead were light from drainage. 811

Q. You did not mean that they were damaged except from drainage? A. No, sir; only from drainage.

Q. You always expect a good deal of drainings from this wet sugar in the early part of the season? A. Yes, sir.

Q. Can you give us approximately what the drainage is in the early part of the season? A. I should judge, in a cargo of sixteen or seventeen hundred casks, we would have 16 or 20 casks.

Q. Not more than that, the early part of the season? A. No, sir.

812

By Mr. Black:

Q. You mean lost by drainage that quantity? A. Yes; you may get a great deal of that in one hold and none in the other.

By Mr. Kirlin:

Q. How much drainings did you gather up out of the No. 1 hold? A. I did not gather any of it.

Q. It came there to your refinery, did it, all the drainings from No. 1 hold? A. I don't think so.

Q. That was drainings from your sugar, wasn't it? A. I don't know what was done with the drainings; they didn't put any there while I was there.

813

Q. You don't know whether any of the drainings was picked up and brought there from the No. 1? A. No; I know it was picked up, but don't know whether it was put there?

Q. You understood it was part of your consignment, didn't you? A. I don't know.

Q. Don't you claim the drainings as well as the sugar at the refinery? A. I don't know what they do about that.

Q. Whose province is it to see the drainings are brought ashore as well as the sugar? A. If they kept the drainings we put them ashore.

814 Q. What else do you do with it, besides keeping it, if you do keep it? A. I don't know what they do.

Q. Who would know about that? A. Mr. Spitzer.

Q. Were there any drainings in No. 3 or No. 4 holds? A. Not that I saw.

Q. Were you down in the ship when they broke out the ground tiers in No. 3 and No. 4? A. I was on deck.

Q. Did you look down? A. Yes.

Q. Did you see any drainings? A. No, sir; that is, I wasn't there when they were finishing up; they had just started to break out the tiers.

Q. Did you look down when they began to break
815 out the ground tiers? A. No; the second tier in No. 3.

Q. How many tiers were there? A. Two tiers high, when I was there.

Q. That is, they were one tier below where they started working when you looked down? A. Yes.

Q. You could see whether the drainings in the No. 3 hold was over the second tier, could you? A. There was no drainings, I could see, in No. 3.

Q. You did not see them actually removing hogsheads from the bottom tier in No. 3 or 4? A. No, sir.

Q. Nor in No. 2? A. No, sir.

Q. Did you see any part of the No. 2 between-
816 decks discharged? A. No, sir.

Q. Except the bags? A. Except the bags.

Q. Did you notice whether there was a bulkhead between the No. 2 and the No. 1 hold? A. Yes, sir.

Q. Below? A. Yes.

Q. Was that tight? A. I couldn't tell you.

Q. How did it appear to be? A. I thought it was an iron bulkhead.

Q. Do you take any account of the shortage in weight in the hogsheads? A. No, sir.

Q. Who does that? A. Mr. Spitzer.

Q. How high up did the drainings in the No. 1

hold come upon the hogsheads of the ground tier? 817
A. They partly covered some of them.

Q. Will the drainings from one cask damage another cask of sugar? A. I don't know.

Q. Are not the casks tight enough, so that the drainage from one cannot get into another? A. Some are tight and some are loose.

Q. If a hogshead is full of sugar, and the sugar is wet and has a tendency to drain, would not that tendency repel the tendency of the drainings from other casks to enter? A. I don't think so, if there is sufficient quantity of it there.

Q. Well, would not the tendency be contrary to it? A. I couldn't tell.

Q. You said that the heads were out of a few of 818
the hogsheads, and that the contents were gone from other hogsheads——

Mr. Black: What hold is he now speaking of?

(Question continued.) No. 1. And that the contents were all gone from hogsheads that were whole, the contents must, of course, have drained out of those hogsheads? A. Yes, sir.

Q. How do you account for the absence of the heads from them—I mean from those that had no heads? A. I suppose the heads had been forced out by the weight.

Q. Where was the sugar that had come out? A. It was mostly drainings. 819

Q. Melted? A. Yes, sir.

Q. How did you account for the fact that the damage of the bag sugar was limited to the ends of the bags around the coamings of the hatchway; what would that indicate to you? A. Just repeat that.

Q. Did the fact that the bag sugar was damaged by molasses, did the ends of the bags indicate to you that the molasses from the between-decks had gone down the hatchway? A. The after portion of the No. 2 hatch?

820 Q. That the molasses of the between-decks had gone down the hatchway? A. Yes, sir.

Q. And damaged the ends of the bags as it went down? A. Yes, sir.

Q. What was stowed around those bags in the lower hold, next to them? A. Stowed on top of the sugar casks.

Q. Anything else in the immediate neighborhood from where this molasses had evidently gone down from the No. 2 between-decks hatchway? A. No, sir.

Q. How many tiers of bags and hogsheads were there in the No. 2 hold? A. Probably six.

Q. A good deal of drainings from all of them? A.
821 In the No. 2, I don't know.

Q. You did not see the bottom disturbed? A. No, sir.

Q. You said you saw some water in the No. 3 hold; was that up near the bulkhead? A. The shaft of it.

Q. Was it on the cargo? A. On the skin.

Q. Was it below the dunnage? A. Yes, sir.

Q. And that was not high enough to cause damage to the cargo? A. No, sir.

Q. Under the floor? A. On the floor.

Q. But under the dunnage? A. Yes.

Q. You don't remember which side of the tunnel that was on? A. I think it was the starboard side, but I would not say positively.

822

By Mr. Parkin:

Q. What do you mean by saying that the hogsheads in No. 1 were injured by drainage; what drainage do you refer to there? A. Their own drainage.

Q. And the drainings from the molasses, too? A. I suppose so.

By Mr. Kirlin:

Q. There was no molasses in there, was there; did you see any? A. No, sir.

By Mr. Parkin: 823

Q. You could not tell whether it was drainings from molasses or sugar, could you? A. No, sir.

Q. It was all mixed in together? A. Yes, sir.

Q. I suppose the drainage from sugar is gradual, is it not? A. Yes, sir.

Q. What becomes of that drainage ordinarily, do you know? A. Well, it lays in the limbers, if they don't pump it out, and they get it here on discharging.

Q. That usually lies down below the hogsheads of sugar in the limbers and does not come up? A. In the limbers.

Q. And there is not usually sufficient of it to fill up the limbers and rise upon the sugar, is there? A. 824
No; I have never seen any indication of it any time.

By Mr. Black:

Q. Mr. Scott, when you say there was drainage in No. 1 and you did not see any in No. 2, and that there was a bulkhead between No. 1 and 2, do you mean to give the impression that the drainings from No. 2 had got into No. 1? A. No.

Q. So whatever drainage you saw in No. 1 you assumed to be the drainage from the casks stowed in No. 1? A. No, sir.

Q. What did you assume? A. I assumed that it was mixed with the molasses that had got adrift.

Q. How could the molasses which had got adrift 825
in No. 2 between decks reach No. 1 with the bulkhead between? A. If that was a wooden bulkhead, it seems to me it could go through.

Q. Provided it rose through the limbers? A. Yes, sir.

Q. And if the limbers were free and the sluices were free, would it then have reached the molasses in No. 1? A. I don't think so.

Q. When you say the molasses on the bags appeared to have come over the coamings of the bulkhead in No. 2 hatch, was that the impression you

826 got from seeing the marks on the bags and the way they were stowed? A. Yes.

Q. Were these marks on the side of the No. 2 hatch or on the end of the No. 2? A. They were in the after portion of the No. 2 hatch, too.

Q. Those bags came up against the molasses stowed in the No. 2 between-decks, didn't they? A. No, sir.

Q. What was between them and the molasses? A. Nothing.

Q. An open space? A. Yes, sir.

Q. And if those barrels of molasses were all adrift and pounding round and flying about in that between-decks, as the vessel rose, would that account
827 for the marks of the molasses you saw on those bags? A. Yes.

By Mr. MacFarland:

Q. I think you said in No. 1 hold there were a couple of hogsheads of sugar with their heads out? A. Yes, sir.

Q. I forget whether you gave any reason for their being out? A. Pressure of the cargo, and they may have forced those heads out in discharging the cargo.

Q. They may have knocked them out in discharging the cargo? A. Yes.

Q. But how they got out you did not know? A.
828 No, sir.

By Mr. Black:

Q. It is a very common thing for hogsheads of sugar to knock their heads out when handling? A. Yes, sir.

Q. How frequently have you found that? A. I think the casks were handled with their heads out.

Q. Well, that causes loss of sugar? A. Yes, sir.

Q. Now, the hogsheads of sugar that came out empty, were they whole hogsheads? A. The casks were in good condition.

Q. The contents were all gone? A. Yes, sir. 829

Q. You judge by the weight of them in handling them? A. Yes, sir.

OLIVER SPITZER, a witness called on the behalf of the respondent, being duly sworn, testifies as follows:

DIRECT-EXAMINATION by Mr. Black:

Q. What is your business? A, Superintendent of the dock of the American Sugar Refining Company.

A. What dock, where is it? A. At the foot of South Fourth street, Williamsburgh.

Q. How long has that been your position? A. Five or six years. 830

A. As superintendent of the dock, do you have anything to do with seeing after the discharge of sugar that comes consigned to your company? A. Yes, sir.

Q. Did you have anything to do with attending to the receipt or looking after the discharge of the steamer *Centurion* in February of this year? A. After it was landed.

Q. Did you go on board her in course of her discharge? A. I did.

Q. How soon after she got here? A. The afternoon of the day she arrived.

Q. Was that before she began discharging? A. Yes. 831

Q. Had the hatches been taken out? A. One.

Q. Which one? A. No. 2.

Q. And when you got on board did you look down to see the condition of things? A. Yes.

Q. Tell us what you saw? A. I saw one cask had its head, with the head out, and there was a little molasses in it and some root.

Q. That is all you could see from the position you were in? A. Yes, I did not stay on very long.

Q. Afterwards did you go on board when the hatches had been taken out? A. Yes, that was after

832 the drainage was seen in the hold of the No. 1 hatch.

Q. During the interval the cargo had been discharging? A. Yes.

Q. What cargo had been discharged? A. The Muscovado hogsheads and the centrifugal sugar.

Q. What is the difference between Muscovado and centrifugal sugar? A. Different process of making.

Q. Is one moist and one dry? A. One has a large grain and the other soft.

Q. Does the Muscovado contain a large amount of drainage? A. Some drainage.

Q. And does it vary as the season advances—
833 vary, where it is the first or latter part of the season? A. I couldn't say.

Q. In respect to those hogsheads and bags that came did you find any damage? A. The lower tier in No. 1 and some in No. 2 were damaged.

Q. How about the bags? A. There was some damaged bags in No. 2, about the coamings of the hatch.

Q. What was the nature? A. Partly slack, that is all.

Q. And what was the nature of the damage to the hogsheads in No. 1 and No. 2, lower holds? A. A few of them empty.

Q. Any of them broken in, with heads out? A.
834 Yes, there was some out, but the hogsheads themselves were in pretty good shape.

Q. When you say some were partly empty, you mean the lower tiers or generally? A. The lower tiers only.

Q. Which lower tier was taken out first, No. 1 or No. 2? A. No. 1.

Q. After that was taken out, were you on board the vessel so as to see the condition of things in that hold? A. Yes.

Q. Tell us what you saw in that hold? A. I saw a great quantity of drainings in there, while they were taking out the lower tier.

Q. How high did the drainings come on the lower 835
tier in that hold? A. There was two feet of drainings.

Q. All across? A. No, on the starboard side.

Q. The starboard side was down? A. Yes; she listed.

Q. As she first arrived, had she that list? A. Yes.

Q. How heavy a list was it? A. I should judge three feet about.

Q. The starboard side was three feet lower than the port? A. Yes; I should judge so, but I would not be certain.

Q. It was a noticeable list? A. Yes.

Q. And what you would consider a pretty heavy list? A. Yes, sir.

Q. Coming back to the drainings in the lower 836
hold, you say there were about two feet in the starboard side—were the hogsheads of sugar still there when you noticed that? A. Yes, sir.

Q. Did you see those drainings removed? A. Some of it.

Q. So you know who did that work? A. I think it was McCormack; I wouldn't be certain.

Q. What was the condition of the hogsheads that came out of the No. 2 lower hold? A. There was some partly empty ones—well, not empty, but loss anyway.

Q. The principal loss was found to be in which hold? A. No 1.

Q. And as to that, about how many hogsheads 837
were there empty in the No. 1? A. I don't remember that.

Q. Have you any report of that? A. I have at the refinery, not with me.

Q. In the No. 2 I am speaking of, how many hogsheads were empty? A. I don't remember.

Q. Did you see drainings in the lower No. 2 hold as well? A. Yes, a little; that was when they got on the ground tier the second day, after some of the drainings had been taken out of them.

Q. Was that on the starboard side as well, principally? A. Yes, sir.

838 Q. What was the condition of the cargo that came out of the No 3 lower hold? A. All right.

Q. And No. 4? A. In good order.

Q. No damage to amount to anything? A. No, sir.

Q. None to make a claim? A. No, sir.

Q. The only damaged sugar cargo was that which came out of No. 1 and No. 2? A. Yes, sir.

Q. And when the cargo of No. 2 and No. 1 had been discharged, did you notice the condition of things in the between-decks of No. 2? A. No, sir.

Q. Didn't notice that at all? A. No, sir.

Q. The vessel, after discharging all her sugar went away to discharge the remainder at another
839 dock, with the molasses? A. Yes, sir.

Q. Did you notice any water in the ship at any place? A. No. 3.

Q. Whereabouts in No. 3 did you see water? A. Near the shaft tunnel.

Q. Did you ascertain what it was by any experiment? A. I did.

Q. What did you find it to be? A. Salt water.

Q. Did you notice how much of it there was? A. Only a few inches.

Q. Did it come in contact with the cargo at all? A. No.

Q. Did you notice any salt water damage to any of the cargo which came out of the forward
840 between decks of holds 1 or 2? A. Salt water damage?

Q. Yes? A. No.

Q. And this damage to bags which you have spoken of in the forward part of the vessel, how many bags were damaged in that way? A. I would have to refer back to some reports I have at the refinery, to tell you that.

Q. You don't remember? A. No.

Q. Can you tell me whether the damage indicated that the bags had been stained or soaked in any stuff, or was it only on a portion of the bags which showed? A. I don't remember.

Q. I understood you to say you did not notice any salt water damage to any of the bags? A. I don't know whether it was salt water or not. 841

Q. Was the damage to the bags serious or not? A. I don't remember.

Q. Did you notice any drainage of the sugar in the after No. 3 and No. 4, lower holds? A. No.

Q. If there had been drainings there, which had been taken out through the scuppers and pumps, that would account for its absence, wouldn't it? A. Yes.

Q. Any kind of sugar you would expect to drain somewhat? A. Yes.

Q. And your experience is that there is more or less drainage from it? A. Yes, from Muscovado. 842

Q. Is there any usual percentage of drainage in that sugar? A. I did not take notice.

Q. Is there anybody in the sugar refinery's office to take account of such things? A. That would be in the Wall street office.

Q. Is the sugar when it is delivered at the refinery weighed to ascertain how much it is? A. Yes.

Q. Who keeps the record of the weighing? A. We keep it over there.

Q. I believe sugar is free now? A. We use a city weigher or our own.

Q. Do you remember whether any other cargoes of molasses and sugar combined in the same vessel have come under your observation? A. I remember one, the *Royal Prince*. 843

Q. What was she, a sailing vessel or a steamer? A. A steamer.

Q. In what part of her was the molasses stowed? A. Aft; on top of the cargo.

Q. And what was below it? A. Bags of sugar.

Q. Was any damage done to the sugar by the molasses? A. No.

Q. It came out in good order? A. Yes; the bags were all in good order.

Q. Have you known of cases where molasses was in the between-decks—or was this case in the be-

844 tween decks? A. This was, yes; in the *Royal Prince*.

Q. And thrust on top of the bags? A. I wouldn't be sure; I remember seeing it come out of the lower hold hatch.

Q. And what cargo was below it in the lower hold? A. Centrifugal sugar in bags.

Q. When you say the bags were below, do you mean the bags were beneath it, were on the same deck, or in the hold below it? A. I don't remember.

Q. But it was certainly below the molasses? A. Yes.

Q. Do you know of any other instances in which
845 steamers have carried fluids in the between decks and sugar below? A. No.

Q. Have you not some acquaintances in the steamer *Holzstein?* A. Yes; I remember that; she had molasses forward.

Q. And what underneath? A. I think there was bags underneath, but I wouldn't swear. She had bags in her and molasses forward in No. 1 hatch.

Q. Did they come in proper condition on that occasion? A. Yes; everything in good order.

Q. Do you remember about how many hogsheads there were in the lower tiers of No. 2 and No. 1 lower holds in this vessel? A. No.

Q. Did I understand you to say the whole of the
846 upper tiers in both those lots were in good order? A. Yes, sir.

CROSS-EXAMINATION by Mr. Kirlin:

Q. Mr. Spitzer, can you tell me whether drainings from the casks does damage to other casks with which that drainage comes in contact? A. If there is a sufficient amount it would.

Q. Will it damage it? A. Well, it will drain some of the sugar out of the casks, and then what is in the casks will weigh heavier, and it will take so much more to refine it, and we don't get the same amount out of it.

Q. The contents of a cask are more or less damp at the time of shipment? A. I don't know about that. 847

Q. Well, Muscovado is pretty damp when it leaves there? A. Not always; there is a foot at the bottom of the hogsheads where the drainings will settle.

Q. It makes the bottom of the contents soggy and the rest will be dry? A. Yes, the rest on the top is all dry.

Q. And the only effect of that large amount of drainings of molasses in that hold would be to increase the amount of the weight of the sugar in the hogsheads? A. If there is enough of drainings in the hold of the vessel it would be apt to dissolve the sugar. 848

Q. But hogsheads are supposed to be tight, arn't they? A. No; there are no tight sugar hogsheads; there are holes in them, cane sticking out, for the hogsheads to purge; there is an inch or half an inch hole, and four or five of them.

By Mr. Black:

Q. In what part of the hogsheads? A. In the head; and then the staves are loose in all hogsheads.

By Mr. Kirlin:

Q. You often have cargoes consisting of hogsheads in the lower holds, of Muscovado sugar? A. Yes. 849

Q. In such cases you find plenty of drainings? A. Yes, unless they pump it out before they arrive.

Q. When there are drainings in the ship before it gets here, do you claim that as part of the consignment? A. If it is bought landing weight we have nothing to do with the drainings; if it is bought invoice weight we take it ourselves.

Q. Do you know if the *Centurion* cargo was all landing weight? A. Yes.

850 Q. So you have no interest in the drainage? A. No.

Q. And you did not take any interest to use it? A. No, sir.

Q. No part of the molasses was consigned to your company? A. No, sir.

Q. Do you remember whether the molasses in the *Holzstein* was stowed in the between-decks? A. I don't remember.

Q. And you don't remember exactly whether the molasses which you referred to in the other cases as being above bags was in the between-decks or in the lower hold on a platform? A. I think it was in the between-decks, as it was the first thing to come out
851 before we got to the sugar.

Q. How much molasses was in there? A. I don't know.

Q. I understand you to say you did not think the salt water in No. 3 had done damage. A. No, sir.

Q. Were you there when they took out the ground tier in No. 3? A. Yes, sir.

Q. You saw there was no damage, did you? A. There was one hogshead had a sort of a big stain on it; that's all.

Q. Did you notice whether there was any hogsheads of molasses in No. 3? A. Yes.

Q. Did you see any loose molasses in No. 3 between-decks? A. No.

852 Q. All dry? A. Yes.

Q. And no drainings in the bottom? A. No drainings; only just this water.

Q. Which side was that water? A. Starboard side.

Q. Up next the tunnel? A. Right close to the tunnel.

Q. Did you see any water or drainings on the starboard side next to the shaft? A. I saw— I answered that. I found some right near the tunnel on the starboard side.

Q. I am asking you now about the starboard side of the ship? A. In the wings?

Q. Yes; all the hogsheads you saw taken out were close to the tunnel? A. Yes, sir. 853

Q. And the ship had a list to starboard? A. Yes; but at the time I saw it she did not have much list, for she was almost out; that was the afternoon before she finished.

By Mr. Black:

Q. She righted up in the meantime? A. There was not much more in her.

Q. She righted up? A. Yes.

Q. That accounts for your seeing so much more water on the starboard side? A. Yes.

By Mr. Parkin: 854

Q. I understand you to say that when drainings get mixed with sugar, the sugar is of an inferior quality, or you can't get as much out of it? A. It is lower.

Q. The ordinary drainings from sugar, as I understand you to say, are pumped out? A. In some cases, yes; they pump out if they can.

JOHN MACCORMACK, a witness called on behalf of the respondents, being duly sworn, testified as follows:

DIRECT-EXAMINATION by Mr. Black:

Q. What is your business? A. Employed by my father. He is a dealer in sugar and molasses. 855

Q. Did you have anything to do with the drainings from the cargo on the steamer *Centurion* in February of this year? A. Yes, sir.

Q. What did you have to do with it? A. Collected it out of the vessel's hold.

Q. And which part of the vessel did you first commence to take any drainings out of? A. No. 1 hatch.

Q. Before you commenced had all the cargo been taken out of that No. 1 hold? A. No, sir.

856 Q. What was there when you commenced to take the drainings out? A. There was one tier of hogsheads of sugar.

Q. Had the vessel any list at the time you commenced to take drainings from her? A. She had a list to the starboard side towards the wharf.

Q. That side was lower than the other? A. Yes.

Q. About how much was that down after all this cargo had been taken out? A. I couldn't tell.

Q. An appreciable amount? A. Yes.

Q. How did you get at those drainings while the lower tier was there? A. By the stevedore taking out one or two casks so I could put an empty molasses cask in and start to bail out.

857 Q. Did you bail it in through the head or bung? A. Through the bung, what they call a scuttle bung; a piece cut out so you can throw it in.

Q. A cask with an opening in larger than a bung? A. Yes.

Q. What was the height to which the molasses and drainings in No. 1 hold rose on the lower tier of casks already there when you commenced? A. About 18 or 20 inches.

Q. Equally, or more to the starboard side? A. More to the starboard side.

Q. And how high to the port side? A. About 9 inches.

Q. And how many hogsheads of molasses and
858 drainings did you take out of this No. 1 forward lower hold? A. I took in the neighborhood of 35 out of No. 1.

Q. Did you complete it all in the one day, the day you commenced to work on it? A. No, sir.

Q. How many days were you working there? A. Three days, I think; I was there night and day.

Q. Did you notice whether the number you took out the first day lowered the height of the fluid in the No. 1? A. It did, considerably.

Q. And you saw it when you returned to work the next day? A. It was then just about the same.

Q. Did you finish all the drainings in No. 1 before

you commenced on the others? A. No, started all 859
hatches.

Q. Which hatches? A. The main hatch, No. 2 and No. 3.

Q. How many hogsheads of drainings did you take out of No. 2 lower hold? A. I couldn't give you the exact number.

Q. Give me as near as you can how many out of No. 2? A. About 15 or 20.

Q. How many out of No. 3? A. I took the balance.

Q. How many did you have altogether? A. 80 hogsheads.

Q. Did you have anything to do with the opening of the bilges after you had got out all the drainage? 860
A. Yes, sir.

Q. What did you do? A. I collected what I could get out.

Q. What did you find the condition of things in the bilges of No. 1 and 2? A. I found them considerably heavier than what I got above the skin.

Q. Did you find any solid material in those bilges? A. Yes, sir.

Q. Did you find any salt water in any of your examinations of these drainings, or molasses, or in the bilges? A. There was some salt water, but I couldn't solemnly swear how much, but the molasses I got considerable.

Q. Do you mean to say the molasses in No. 1 and 861
No. 2 was thicker than in No. 3? A. The No. 3 was considerably thinner than in No. 1 and 2.

Q. What was the condition of the trim of the ship when you commenced working on No. 1, by the head or stern? A. That I couldn't exactly say; I didn't take notice of anything like that.

Q. Well, could you by the molasses; the molasses would be a level, just the same as a spirit level lying in the hold; could you tell by the way the molasses had been lying in the side of the vessel, tell whether the vessel lay by the head or by the stern? A. I could not tell.

862 Q. You can tell where you took the thicker part of the drainings? A. There was so much there it is hard for me to tell.

Q. But as you closed your job and got it nearly all out, you would find it run most to the head or the stern? A. To my knowledge it was running pretty even.

Q. Where did you take the last that you took out of No. 2 from, from the after end of No. 2 or the forward end? A. The after end.

Q. That would show she was by the stern, wouldn't it? A. That was the second day or third day I was working.

Q. Before that did you notice whether she was by
863 the head or stern? A. No, sir.

Q. How many gallons of stuff was in each one of those hogsheads you took out? A. I guess they held in the neighborhood of 160 gallons.

Q. I think you took in all 80? A. 80 casks.

Q. Was the molasses you got out of No. 3 over the top of the ceiling in that No. 2 hold or in the bilges? A. Over the ceiling and in the bilges, both. It ran from the bilges over the ceiling.

Q. In No. 3? A. Yes, sir.

By Mr. Parkin:

Q. What was done with those that you took out —those casks of drainings? A. Sold to vinegar
864 manufacturers.

Q. As refuse? A. For manufacturing vinegar.

By Mr. Kirlin:

Q. Who employed you to do this work, Mr. MacCormack? A. Mr. Bowman.

Q. Mr. who? A. Mr. Bowman.

Q. Is he a sugar broker? A. Yes. He has considerable of this sugar, and we always collect drainings on those ships for him, and we done it for him this trip.

Q. Were you employed by the day, or were you

given this molasses for taking it out? A. Yes, something like that; I was not, but my father. 865

Q. Were you employed by the day? A. No, sir; just what the molasses fetched.

Q. Whose molasses was it? A. Our molasses.

Q. You got paid for it and kept the money? A. Yes, sir.

Q. How much did you get for it; do you remember; what did you get a gallon for it? A. We sold some for eight cents, some for nine cents, and some for ten cents.

Q. You turned none of this into Miller, Bull & Co.? A. That I can't say; my father attended to it.

Q. How large a force of men did you begin with first, the first day you began to gather molasses from the No. 1 hold? A. About five or six men. 866

Q. How many casks did you take up? A. About twenty-six till three o'clock next morning.

Q. And when you came back you said you found the level about the same? A. Yes, sir.

Q. And the next day you went to work in all the other hatches? A. Yes; the next day I started in with more men.

Q. Did you have an equal number of men in each hold? A. No; in some hatches I had three or four, and some six or eight.

Q. Did you keep your force all through? A. Yes.

Q. And only three in that No. 2? A. No; I had more than that; I think I had in that neighborhood, three or four to start. 867

Q. But you finished No. 1 first, didn't you? A. No; they were all working together.

Q. Which hold did you finish first? A. All about the same time, because when they went across the street I collected it, all I could get at.

Q. There was no evidence of salt water in the No. 1 or 2 holds? A. I couldn't tell, but it was considerably thinner than the Porto Rico.

Q. You said No. 3, the molasses there was thin-

868 ner? A. That was because there was salt water in it.

Q. The No. 1 and No. 2 were of equal thickness? A. Of drainings; yes.

Q. You did not tell us the number of packages you took out of No. 3? A. That I couldn't exactly say.

Q. You said you took thirty-five from No. 1? A. About that.

Q. And about twenty from No. 2? A. Yes.

Q. That would leave about twenty-five for No. 3? A. No. 3 and No. 4; I guess that is pretty close to it, as close as I can get.

869 By Mr. Parkin:

Q. You say that No. 3 was thinner than molasses usually is from Porto Rico? A. The molasses in No. 3 was thinner—the drainings—than in 1 and 2.

Q. Did that indicate to you it was molasses or drainings from sugar? A. It indicates to me it was molasses and sugar with salt water. We have a "Beaume," with serrated glass, and we put it in the molasses, and when it goes to 36 it is drainings, and below that it is what we call pumpings, bilge water, and this went to thirty-five, so they must have run salt water in it.

870 By Mr. MacFarland:

Q. What it was you don't know? A. No.

By Mr. Black:

Q. In regard to the generality of sugar cargoes brought here, do you or do you not always find a considerable amount of drainings when it is moist sugar? A. When they don't pump it out, yes.

Q. Do you know the average of drainings in sugar? A. No.

HUGO H. HARNISH, a witness called on behalf of 871
the respondents, being duly sworn, testifies as follows:

DIRECT-EXAMINATION by Mr. Black:

Q. Mr. Harnish, what is your business? A. I am an analytical chemist.

Q. Are you a graduate of some college? A. Yes.

Q. What college? A. Berlin.

Q. How long have you studied chemistry and practiced as an analytical chemist? A. I have studied from 1859 to 1863, and have been employed here from 1867 till 1870, and have since established myself as an analytical chemist; that is to say, I have carried on under my own name since 1870 a laboratory. 872

Q. Where is your place of business? A. 113 Water street, since 1870.

Q. Are you familiar with the article called ammonia alkali? A. I am.

Q. Are you familiar with carbonate barytes? A. I am.

Q. With cement? A. I am.

Q. Are you familiar with crystal soda? A. Yes.

Q. With antimony? A. Yes, sir.

Q. And with bleaching? A. Powder—yes, sir.

Q. Are you familiar with the article called molasses? A. Yes, sir.

Q. And also sugar drainings? A. Yes, sir.

Q. Have you made any experiments for me with 873
reference to the action of the chemicals I have named to you, either singly or in combination, upon some drainings and molasses?

Objected to by Mr. Kirlin as immaterial.

A. Well, I have not made any experiment in this particular case with drainings, but I have made experiments at the suggestion of you with molasses.

Q. And is there any difference in the chemical constitution of sugar drainings and molasses? A. While sugar drainings contain a larger quantity of water than sugar, it is because raw sugar contains

874 water and sugar, and by action of specific gravity the water percolates through the sugar and forms what we call drainings.

Q. And that contains a quantity of saccharine matter in solution? A. That contains part of the sugar that was formerly in the sugar; molasses is the residue of different boilings of sugar cane.

Q. That is left after the crystallization? A. Crystallization has taken place.

Q. Describe the experiments you have made for me? A. I must confess I believe the experiments I have made so far are insufficient, because I believe we have to imitate the action of molasses in a vessel, in a sailing vessel.

875 Q. The only action would be the continual motion? A. No, I do not mean to say that. You said to me this morning that they had some sweepings, and they were kind of sticky, and so I have to presume that something was left in the vessel to cause those sweepings; consequently, if I take certain articles, if I take certain sweepings or any such materials which represent these sweepings, and put a certain amount of molasses on top of these sweepings and leave them for a certain time, then I will have some proof of how it has acted in a certain time. I have here a certain portion of a certain chemical you mentioned.

Q. Of the ones I have mentioned here? A. Men-
876 tioned by you or mentioned to me. Mix them thoroughly with molasses and let them stand for a couple of days. This is probably not the right way to do, because in the vessel there was no mixing done in that way, but simply, I understand, the vessel took water and drainings were produced, and they fell right on top of that.

Q. Now, you have misunderstood, and you have probably assumed certain things which I did not lay before you. All I wished you to do was to find for me what the action of a certain combination of those chemicals with a certain quantity of molasses would be? A. I have done that.

Q. Take each one separately and tell me what pro- 877
portion of each one you have taken? A. I took one spoon of chemicals and ten or twelve spoons of molasses, stirred them up, and left them.

Q. Did you treat each one in the same way? A. Yes.

Q. Tell me the result with each of the ones you tried? A. (The witness produces a small pan.) This is the result of the bleaching powder; it was first perfectly hard, when I first made it, but you will recollect that bleaching powder has a peculiarity, that when mixed with any other substance it becomes hydroscopic.

Q. That is, taking water? A. Taking water from the atmosphere. This bleaching power with molas- 878
ses is what I have here. I believe it is approximately one to ten: bleaching powder one, molasses ten.

The article produced by the witness is marked Exhibit 1, of this date.

The Witness: I believe it will become thinner as it accumulates more moisture, as it absorbs more moisture.

Q. Please give me what you consider a proper description of its present condition, as to its consistency? A. It is a kind of gummy mass.

Q. Would you call it a viscid material? A. No; I would rather call it a mass resembling mellite, or a 879
sticky mass.

Q. It is in such condition that you can turn the box up without running out now? A. Yes.

Q. What is the next combination you tried? A. The next combination is carbonate barytes. (Producing article.) This is about the same proportion, approximately, ten to one. The result is it forms a slippery mass without hardening, and if you will expose a portion of it to the air, a small portion at the end, letting a current of air get on it, it becomes harder.

880 Q. And its consistency is more than mud? A. It has a muddy consistency.

The article produced by the witness is marked Exhibit 2, of this date.

Q. Now, the third operation you went through was? A. Portland cement and molasses.

Q. And that produces an article of what character? A. A harder character (producing article).

Q. Were these the same proportions? A. Yes; all three the same.

The article produced by the witness is marked Exhibit 3, of this date.

881 Q. What is next experiment you made? A. That is all I did, sir.

Q. Are you familiar with the article called carbonate barytes? A. I am.

Q. Is it an article which contains any powder in its commercial form, or is it in lumps? A. It is in powder form.

Q. In its commercial form it is a powder? A. Yes.

No cross-examination.

882

DEPOSITIONS of witnesses for the claimant, examined at the office of Messrs. Convers & Kirlin, Temple Court, June 3, 1893, pursuant to the stipulation previously made. 883

Mr. PARKIN, for Libellants.
Mr. BLACK, for N. Y. and Porto Rico SS. Co.
Mr. KIRLIN, for Claimant.

PETER YUNGREN, being duly sworn and examined as a witness for the claimants, testified:

By Mr. Kirlin:

Q. Did you discharge the steamer *Centurion* on her arrival here from Shiels last January? A. Yes. 884

Q. Do you remember whether she had any barytes on board? A. Yes, sir.

Q. Where was it stowed? A. One part in No. 1 hold and one part in No. 3 hold.

Q. Any in No. 2? A. No, sir.

Q. What was the character or appearance of this barytes? A. Well, it is like broken up pebble stones you might say.

Q. Is it powder or clay? A. No, it is a stone, like a small rock, hard rock.

Q. Was any of it broken? A. No, sir; just like stuff for to use for roads, broken pebble stones.

Q. How was it shipped, in cases or in bulk? A. In bulk in the lower hold, No. 1 and No. 3. 885

Q. Had she any Portland cement on board? A. Yes, sir.

Q. Where was that stowed? A. Part of it in No. 2 between-decks, and the greater part of it in No. 3 between-deck, lower hold; a little in No. 4 hold.

Q. Was any of that in No. 2 lower hold? A. No, sir.

Q. Had she any bleaching powder and soda ash? A. Yes.

Q. Where was that? A. No. 2 lower hold.

Q. Anywhere else? A. No, sir.

886 Q. How much of that was there? A. I don't quite remember exactly.

Q. Was it broken? A. Part of it was; yes, sir.

Q. Do you remember how much? A. I don't exactly remember how much; the foreman knows more about that than I do.

Q. Were you present on board during the unloading of the cargo? A. I was there every day except Saturday, the last day, which I was missing.

Q. And did you see whether the cargo was all discharged and the holds cleaned out? A. Not at the last.

Q. Were they finished between-decks in No. 2? A. Yes.

887 Q. All cleaned out? A. As much as you could for such cargo. There is always lots of sweepings and rubbish, dunnage, boards and broken casks and matting.

Q. All the cement cleaned out? A. As much as could be.

Q. As much of the cement as was deliverable was gathered up and delivered? A. Yes, sir.

Q. Where was it put? A. In barrels and coopered up.

Q. There was a force of coopers and people there to help with the cargo all the time during the discharge? A. Yes, sir; all the time. The coopers were furnished to the ship by James Walsh, at 114
888 Wall street.

CROSS-EXAMINED by Mr. Black:

Q. I understand you were not present when the No. 4 hold was finished discharging? A. No.

Q. When was that finished? A. That was finished about two o'clock on Saturday morning.

Q. Were you present when No. 1 was finished discharging? A. No; let's see; I was there when we were working—I don't remember when No. 1 was finished, on Friday or Saturday; I wasn't there when I saw they finished it.

Q. Was this barytes in No. 1 lower hold all in one 889
place? A. All in one little place.

Q. Was anything besides this barytes in No. 1 lower hold? A. I wouldn't swear, for there might have been a few barrels of soda ash on top, and that had gone out before I got there.

Q. Was the entire floor of the No. 1 lower hold covered with this barytes? A. No.

Q. There was nothing else in the other part which was not covered by the barytes? A. No.

Q. The soda ash was on top? A. It must have been.

Q. Was this little place aft against the bulkhead or forward in a heap? A. Aft.

Q. Covering the width of the ship? A. Covering 890
the width of the ship from the hatchway, from the after part of the hatchway, towards the bulkhead. It was only from 110 to 120 tons, if I remember.

Q. All in that one heap? A. In that one heap.

Q. Any barytes in the after part of the vessel? A. No. 3.

Q. Was that in bulk too? A. In bulk too.

Q. And in a heap the same way? A. In a heap the same way.

A. How much was there there? A. I haven't quite recollection how much; there was altogether, I think, in the neighborhood of 250 to 300 tons, the whole lot, the two lots.

Q. Was there any barytes besides this which was 891
in bulk which was packed in casks? A. Not if I remember; I wouldn't say.

Q. I only ask because the ship's manifest shows there was? A. It may be, but I don't know.

Q. Not remembering whether it was there or not, you can't tell what part of the vessel that was kept? A. If there was, it must have been in No. 1 instead of the soda ash; the soda ash and the bleaching powder, that was all in No. 2.

Q. Were any of the casks in No. 1 broken? A. No.

Q. None? A. Nothing broken in No. 1.

892 Q. Any slacked in any way so as to need recoopering? A. That I can't answer; I may say though that the cargo in No. 1 hold was all in good condition.

Q. When they came to discharge the barytes from No. 1 was it shoveled up into tubs? A. Into tubs.

Q. And, of course, there was more or less dust and powder in through it? A. There is always a little dust when you dump it.

Q. That breaks it up to some extent? A. No breaking up in particular.

Q. It rubs it off and makes dust? A. When you work it down below there is no more fine dust than
893 a great number of pebble stones would have.

Q. In the No. 2 between-decks there was cement? A. Yes.

Q. Was there any in any other part of the ship? A. No. 3 and 4.

Q. How many barrels of cement were there in No. 2 between-decks? A. That I don't remember.

Q. How many barrels of cement aboard altogether? A. I don't remember, because we got it all, a thousand tons, in a lump sum, the whole cargo.

Q. What else was there in No. 2 between-decks besides cement? A. Some casks or barrels or kegs of chemical paints or something, I really forget.

894 Q. Red oxide? A. Yes, sir.

Q. Were any of those broken up? A. Not much, that I remember.

Q. Were any of them? A. I don't remember, scarcely any; I know I saw some dust, quite a little.

Q. Were any of the cement barrels broken up? A. Yes.

Q. A great many? A. A good number in the between-decks and also in No. 4 hold.

Q. In No. 2 lower hold you say there was bleaching powder; was it in bulk or casks? A. Casks.

Q. How many? A. I don't remember.

Q. How many tons of it? A. As I said, we got

the whole cargo in a lump, a thousand tons, and therefore I paid no particular attention to any special thing. 895

Q. Any bleaching powder casks broken up? A. Yes, sir.

Q. Were the contents scattered? A. Yes, sir.

Q. Was that in dust or lumps? A. It is both dust and lumps.

Q. There were bricks aboard? A. Yes, sir; in No. 3.

Q. Weren't they in No. 2? A. No.

Q. None of them? A. No.

Q. Are you sure of that, for the captain has testified that the bricks were in the between-decks of No. 2? A. I think the captain is mistaken; the No. 3 between-decks on the after part against the bulkhead and No. 3 lower hold were the bricks. 896

Q. What else besides cement and red lead was there in the No. 2 between-decks? A. That is all there was.

Q. And what else besides bleaching powder in the lower No. 2? A. Soda ash.

Q. Was that in packages? A. Yes, sir.

Q. Were those broken up? A. More or less.

Q. Was that in powder? A. Soda ash you know comes in lumps, some lumps perhaps the size of your fist.

Q. It crumbles easily? A. Well, it does, it does; but it never goes very fine, you know.

Q. Not as fine as bleaching powder? A. Oh, no. 897

Q. You didn't do anything about cleaning up the vessel after unloading? A. No, sir.

REDIRECT by Mr. Kirlin:

Q. What else was there in No. 2 lower hold besides the bleaching powder and soda ash? A. There was nothing except that to my knowledge.

Q. Was the hold full of that? A. No, she had only a thousand tons in the ship. Part of the cargo was aft further and a little on the between-decks to balance.

898 Q. How much soda ash and bleaching powder was there in the lower hold in No. 2? A. I didn't pay any particular attention; there was about two heights of it as near as I can remember, and perhaps a little of the third one.

Q. How much was broken? A. There was a good many broken, perhaps twenty, twenty-five to thirty casks.

Q. Do you mean by that all gone adrift? A. Just cracked; and some of them had to be refilled again to get new ones; the foreman knows more about that than I do.

Q. Were any of these other casks of the barytes, if there were any, in the No. 2 lower hold? A.
899 There was none in the No. 2; no, sir.

RECROSS by Mr. Black:

Q. Do you know whether those casks contained the same or a different article from the bulk barytes? A. About the same.

Q. Isn't that in powder in the casks? A. Sometimes; generally about the same.

Q. Isn't it in powder in the casks? A. It is powder, but lumpy some.

Q. Were any of the casks of the barytes broken? A. I don't know anything about that.

CHARLES BULDMANN, being duly sworn, and ex-
900 amined as a witness for the claimants, testified:

By Mr. Kirlin:

Q. What is your business? A. I am a longshoreman; I was foreman of the *Centurion* for Mr. Yungren.

Q. Foreman of the *Centurion* in January, when she discharged the cargo from Shiels? A. Yes, sir.

Q. Full cargo, or only part? A. It wasn't full; about 1,000 tons.

Q. When did you first go to the ship? A. Friday morning.

Q. When did you finish? A. Saturday afternoon 901
at 2 o'clock.

Q. In what part of the ship were you employed? A. In No. 1, 2 and 3 hatches.

Q. Will you tell us what was in the No. 2 lower hold; No. 2 hatch? A. In between-decks cement. I took that out first; then some soda ashes and bleaching powder underneath the soda ashes.

Q. Was nothing else in No. 2 lower hold? A. No.

Q. What was in No. 1? A. 110 tons of barytes?

Q. In bulk. A. In bulk, and about 25 small casks of barytes; small casks, that was No. 1.

Q. Were any of those casks of barytes broken? A. One or two with heads out, but coopers were 902
down there and fixed them.

Q. And they gathered it up? A. Gathered it up; yes.

Q. Was any of the cement broken? A. Yes, sir.

Q. Did you gather that up? A. All we could, sir, everything; and when the barrels was broken, the coopers fixed them up again.

Q. How much cement did you leave in the between-decks? A. Didn't leave none; took it all out.

Q. I mean of the loose cement? A. There might be a pailfull or half a barrel full; generally when the barrels are broken we get new ones and fill them up again.

Q. How do you gather it up, with shovels? A. 903
With shovels; yes, sir.

Q You gather it up as much as you could with shovels? A. That is what we done, sir.

Q. Was this barytes in powder or in lumps? A. It is material something like copper ore, or small stones; very heavy.

Q. Any powder in it? A. No, sir.

Q. Did you gather that up off the floor in No. 1? A. It was cleaned up, scrubbed and swept in No. 1.

Q. No. 2 lower hold you had some soda ash and bleaching powder broken up? A. Yes, sir, and we gathered it up the best we could.

904 Q. How much did you leave in the hold? A. Not very much; between dunnage and one thing and another there will be a little settled. There might be some on top of the stuff; we didn't take a broom, but when we had filled the casks there might be a little left.

Q. Did you gather it all up as much as you could with shovels? A. Yes, sir; and we swept up, and then they said there was too much expense in paying the longshoremen 40 cents an hour, and he put his own men down there about ten o'clock in the morning.

Q. How much was there left of the broken barrels and broken casks and cement and bleaching
905 powder and everything, altogether?

Objected to that the witness doesn't know.

Q. After you got through taking out the cargo, about how much was there left? A. What belonged to the cargo, I dare say there might be twenty-five or thirty pounds of bleaching powder and soda ashes; and of rubbish, there might be a cartload, or something like that.

Q. Did you notice the floor in the No. 2 and No. 1 hold? A. Yes, sir.

Q. Was it close? A. It was: it was a new ship you might say, and a new floor, pretty near.

Q. What kind of a bulkhead was there between
906 No. 1 and No. 2 lower hold? A. Right up and down, but in the between-decks there was no bulkhead.

Q. Iron bulkhead? A. Wooden bulkhead.

Q. Was it tight, do you know? A. I couldn't say nothing about that, sir; I suppose it was as tight as boards could make it.

Q. Did you clean the No. 3 hold? A. No, sir; when I come there there was nothing to be cleaned there, sir; she had nothing but bricks and barytes and cement in between-decks.

Q. Did you see down in No. 2 hold after the mate had got through cleaning it out? A. No, I didn't

look down there; I finished No. 2 hatch in the morning, and then I sent my gang away and the crew went down; then I put the hatches on the No. 3 and sent a sailor down there, and he was going to take the dirt that was left in the hold; they said it was too much expense to have the longshoremen there. 907

CROSS-EXAMINED by Mr. Black:

Q. What time did you stop working on No. 2? A. At 10 o'clock Saturday morning.

Q. And then it was that you took the men away from cleaning up No. 2? A. No, there was a gang of longshoremen and they worked at the cargo up to 10 o'clock.

Q. And those were extra men to work? A. Yes, sir. 908

Q. What time did you leave the work in No. 2? A. At 10 o'clock.

Q. And then what part of the vessel did you go to work on? A. No. 3 hatch.

Q. And what time did you finish? A. Saturday at 2 o'clock.

Q. And then did you leave the ship altogether? A. Left the ship altogether.

Q. And you cleaned up 3 between-decks and No. 3 lower hold? A. I had nothing to do with No. 3 between decks; it was cleaned up when I came there.

Q. And you cleaned up No. 3 lower hold? A. There was nothing to be cleaned up because there was nothing there but barytes and bricks and cement there. 909

Q. Didn't the bricks make dust in there? A. Yes, but they wheel tubs to the hatch and if the floor is dirty they wheel the tubs there and take a shovel and take the dirt away in the tubs.

Q. Was the barytes on the top of the bricks? A. On the forward part of the bricks.

910 Q. Did you take out the barytes first? A. No, we took the bricks first, and then the barytes.

Q. And didn't the barytes leave a lot of dust on the floor? A. No, sir; barytes leaves no dust.

Q. None at all? A. No, sir.

Q. Didn't the shovels make any dust when they were pushing into the barytes? A. No, sir; you couldn't shovel barytes.

Q. How were the bricks delivered? A. Picked up by hand and put in the tubs.

Q. And they left a lot of dust? A. There couldn't be much, there might be 5 or 6 pounds.

Q. Did you clean up that lower hold of No. 3? A. No, sir; the mate was down there with the men
911 cleaning up.

Q. The stevedore's gang didn't do it? A. In No. 2 they did till we were told to stop.

Q. Did they do half of it? A. Yes, sir.

Q. And whatever there was down there was left when your gang went away? A. There was no more to do there.

Q. You didn't take any dirt out of No. 2? A. There was no dirt to take out.

Q. There was a lot of dunnage? A. Yes, sir.

Q. And you cleaned about half of No. 2? A. We swept one side of the vessel.

Q. Was that half? A. Yes, sir.

Q. And was there any dust from the bleaching
912 powder down there? A. Yes, sir; that is what I am saying.

Q. Wasn't there dust from the chloride down there? A. Soda ashes you mean; yes, sir; there was.

Q. Is that in lumps or dust? A. Like a powder.

Q. Was it as fine as bleaching powder? A. Yes, sir.

Q. Is it the same color? A. It is white, sir.

Q. Very strong smell? A. Not very strong.

Q. In No. 1 hold you had barrels of barytes? A. Yes.

Q. Were any broken? A. There was two or three heads out. 913

Q. You saw the contents? A. Yes, sir.

Q. Was it powder or what? A. There was some barytes in casks.

Q. In little lumps or power? A. Lumps.

Q. How small was the smallest lump? A. Some the size of my little finger, and some as big as this (indicating his head).

Q. Was any as small as a pinhead? A. Little pieces cracked off once in a while might be about the size of a pinhead.

Q. Some smaller than a pinhead? A. I don't know; in that kind of material there must be some dust in it, but you might as well have dust in glass. 914

915

916 Mr. Kirlin offers in evidence a policy of the London Assurance Company issued to Bregaro & Co. which has been furnished by the proctors for the libellants, which, it is admitted, covers the cargo in question. It is marked Claimant's Exhibit 5 of this date.

Also the policy of the Reliance Marine Insurance Company, issued to Bregaro & Co. also furnished by the proctors for the libellants, which, it is admitted, covers the cargo in question. Each policy insures a half interest. The second policy is marked Claimant's Exhibit 6 of this date.

The policies are omitted as unnecessary.

917 Mr. Parkin offers in evidence the statement of John J. Farrell, the gauger who gauged the molasses in question. It is admitted that if Farrell were called he would testify in accordance with this statement. Signature and oath to the statement waived. It is marked Libellant's Exhibit 8 of this date.

It is omitted as unnecessary.

At the request of counsel for the respondent, it is admitted by counsel for the libellants that after the entry of the interlocutory decree, the Insurance Company paid to the Sugar Refining Company the amount of insurance on the sugar and to Bregaro the amount of insurance on the molasses, and that
918 thereupon the claims for loss of and damage to the molasses and sugar and the decrees rendered were assigned to it.

MacFarland & Parkin,
Libellant's Proctors.

UNITED STATES DISTRICT COURT, 919

SOUTHERN DISTRICT OF NEW YORK.

AMERICAN SUGAR REFINING COMPANY

vs.

SS. "CENTURION."

920

JOSE BREGARO

vs.

SAME.

DEPOSITION of E. G. TURNER, taken on behalf of the libellants at the office of Messrs. MacFarland & Parkin, 22 William street, New York City, June 3, 1893.

Present—WILLIAM PARKIN, Esq., for the Libellants.
J. P. KIRLIN, Esq., for the *Centurion*.
LAWRENCE KNEELAND, Esq., for the New York and Porto Rico SS. Company. 921

Mr. Parkin offers in evidence the bill of lading of the 465 hogsheads of sugar, being the original of Claimants' Exhibit No. 2.

The endorsement is introduced by libellants and not by the claimants.

Mr. Parkin also offers in evidence the consular invoice of the 465 hogsheads.

922 It is marked Libellants' Exhibit No. 1 and is as follows:

Invoice of 465 Hds. sugar shipped by A. Hartmann & Co. as agents of Messrs. Bregaro & Company of Ponce P. Rico on board the British Str. *Centurion*, Watson Master, bound for New York, and consigned to order for account and risk of whom it may concern.

B.	No. 1	139	Hhds.
New York.	No. 2	123	"
	No. 3	17	"
	No. 4	61	"
	No. 5	37	"
923	No. 6	40	"
	No. 7	48	"

465 Hhds. contg.

763,529 lbs. nts. a 3.40 f. o. b. $25,959.85

E & O E

Orroyo, P. Rico, 13th February, 1892.

A. HARTMANN & COMPANY,
As agent for Bregaro & Co.

OATH.

I, H. W. MCCORMICK, of Arroyo, do solemnly and truly declare that I am the purchaser's agent of
924 the merchandise in the within mentioned invoice described. This invoice is in all respects correct and true, and was made at Arroyo, whence said merchandise was to be exported to the United States. Said invoice contains a true and full statement of the time when, and place where, and the person from whom the said merchandise was purchased, and the actual cost thereof, and all charges thereon; that no discounts, bounties or drawbacks are contained in said invoice but such as have been actually allowed thereon; that no different invoice of the merchandise mentioned in said invoice has been or

will be furnished to any one, and that the currency 925
in which said invoice is made out is that which was actually paid for said merchandise.

And I further declare that it is intended to make entry of said merchandise at the port of New York, in the United States of America.

H. W. McCormick,
Purchaser's Agent.

I, J. C. McCormick, Consular Agent of the United States at Arroyo, do hereby certify that at Arroyo, on this 13th day of February, A. D. 1893, the within invoice No. 13, in which are mentioned and described certain sugars amounting with the charges thereon to the total sum of $25,959.85 Porto Rico currency, 926
was produced to me by H. W. McCormick in person, who thereupon declared in writing in my presence that entry of said merchandise was to be made at the port of New York in the United States of America.

I do further certify that I am satisfied that the person making the declaration hereto annexed is the person he represented himself to be, and that the price stated in said invoice represents the actual market value or wholesale price of the merchandise described in the said invoice in the principal markets of the country at the time of exportation, excepting as noted by me upon said invoice or respecting which I shall make special communication to proper 927
authority.

Witness my hand and seal of office at Arroyo, Porto Rico, the day and year aforesaid.

J. C. McCormick,
Consular Agent of the United States.

Libellants' counsel offers in evidence the bills of lading of the molasses, and they are marked Libellants' Exhibits 2, 3 and 4.

(See Claimants' Ex. B.)

928 Also the consular invoices of the molasses.

The consular invoices are marked Libellants' Exhibits 5, 6 and 7, and are as follows:

(Duplicate)

Bregaro Invoice of 100 casks Molasses shipped per Steamer *Centurion* to New York consigned to order for account and risk of whom it may concern.

Molasses free

100 casks fancy Molasses
gauging net 14512 galls
a 38c f o b P R Cy $5514.56

Bregaro & Co

929 ▷▽◁ E & O E P R
△

Ponce
F Pto Rico Ponce P R February 9 1893
New Haven
U S Consulate J Bregaro & Co.
Ponce
Triplicate Invoice F. Costa
No 13 Amount $5514.56 229.
Consulate fee 2 1/2$

Oath

Ponce, P. R. This 9th day of February 1893, I, F. Costa of Ponce Porto Rico, do solemnly and
930 truly declare that I am the purchaser of the merchandise in the within mentioned invoice described. This invoice is in all respects correct and true and was made at Ponce whence said merchandise was to be exported to the United States. Said invoice contains a true and full statement of the time when, and place where, and the person from whom the said merchandise was purchased, and the actual cost thereof and all charges thereon; that no discounts, bounties or drawbacks are contained in said invoice but such as have been actually allowed thereon; that no different invoice of the merchandise mentioned in said invoice has been or will be furnished

to any one and that the currency in which said in- 931
voice is made out is that which was actually paid for said merchandise.

And I further declare that it is intended to make entry of said merchandise at the port of New York in the United States of America.

F. COSTA, purchaser.

I, FELIX W. PRESTON, Acting Consular Agent of the United States at Ponce, P. R., do hereby certify that at Ponce, P. R. on this 9th day of February Anno Domini 1893, the within invoice numbered 13 in which are mentioned and described certain 100 casks molasses amounting with the charges thereon to the total sum of $5514.56/100 Mexican specie, was 932
produced to me by F. Costa, Esq., in person, who thereupon declared in writing in my presence that entry of said merchandise was to be made at the port of New York in the United States of America.

I DO FURTHER CERTIFY, that I am satisfied that the person making the declaration hereto annexed is the person he represents himself to be, and that the prices stated in said invoice represents the actual market value or wholesale price of the merchandise described in the said invoice in the principal markets of the country at the time of exportation, excepting as noted by me upon said invoice or respecting which I shall make special communication to proper authority. 933

WITNESS my hand and seal of office at Ponce, Island of Porto Rico, the day and year aforesaid.

F. W. PRESTON,
Acting Consular Agent of the United States of America.

934 (Duplicate).

BREGARO & CO.

Invoice of 75 casks molasses shipped per S.S. *Centurion* to New York, consigned to order for account & risk of whom it may concern.

Bregaro & Co.	Molasses Free.	
	75 casks choice molasses.	
	gauging 10,790 gls.	
Ponce	a 34c, f. o. b. P. B. Cy.	$3,668 60
Pto Rico		L. R.
C		
New York.		

Ponce P. R., February 9, 1893.

935 J. BREGARO & CO.,
F. COSTA.

227

U. S. Consulate,
Ponce.
Triplicate Invoice,
No. 14.
Amount, $3,668.60
Consulate fee, 2½$

PONCE, P. R. This 9th day of February, 1893, I, F. Costa, of Ponce, Porto Rico, do solemnly and truly declare that I am the purchaser of the merchandise in the within mentioned invoice described.
936 This invoice is in all respects correct and true, and was made at Ponce whence said merchandise was to be exported to the United States. Said invoice contains a true and full statement of the time when, and place where, and the person from whom the said merchandise was purchased, and the actual cost thereof and all charges thereon; that no discounts, bounties or drawbacks are contained in said invoice, but such as have been actually allowed thereon; that no different invoice of the merchandise mentioned in said invoice has been or will be furnished to any one, and that the currency in which said in-

voice is made out, is that which was actually paid 937
for said merchandise.

And I further declare that it is intended to make entry for said merchandise at the Port of New York in the United States of America.

F. COSTA, Purchaser.

I, FELIX W. PRESTON, Acting Consular Agent of the United States at Ponce, P. R., do hereby certify, that at Ponce, P. R., on this 9th day of February Anno Domini 1893, the within invoice numbered 14, in which are mentioned and described certain seventy-five casks molasses amounting with the charges thereon to the total sum of $3,668.60 Mexican specie, was produced to me by F. Costa, Esq., in 938
person, who thereupon declared in writing in my presence that entry of said merchandise was to be made at the Port of New York in the United States of America.

I DO FURTHER CERTIFY that I am satisfied that the person making the declaration hereto annexed is the person he represents himself to be, and that the price stated in said invoice represents the actual market value or wholesale price of the merchandise described in the said invoice in the principal markets of the country at the time of exportation, excepting as noted by me upon said invoice or respecting which I shall make special communication to proper authority. 939

WITNESS my hand and seal of office at Ponce, Island of Porto Rico, the day and year aforesaid.

F. W. PRESTON,
Acting Consular Agent of the United States of America.

940 (Original Duplicate.)

35 675

BREGARO & CO.

Invoice of 75 casks Molasses shipped per steamer *Centurion* to New York consigned to order for account & risk of whom it may concern

Bregaro & Co

Molasses Free

Ponce
Pto Rico F
New York

75 casks fancy molasses 226

gauging 10 936 gls

941 a 38c f o b P R Cy $4155.68

E & O E P L

Ponce P R February 9 1893

J BREGARO & CO
F COSTA

U S Consulate
Ponce
Triplicate Invoice
No 15
Amount $4155.68
Consulate fee 2 1/2$

OATH.

942 PONCE, P. R., this 9th day of February, 1893, I, F. Costa, of Ponce, Porto Rico, do solemnly and truly declare that I am the purchaser of the merchandise in the within mentioned invoice described. This invoice is in all respects correct and true and was made at Ponce, whence said merchandise was to be exported to the United States. Said invoice contains a true and full statement of the time when, and place where, and the person from whom the said merchandise was purchased, and the actual cost thereof and all charges thereon; that no discounts, bounties or drawbacks are contained in said invoice but such as have been actually

allowed thereon; that no different invoice of the 943
merchandise mentioned in said invoice has been or will be furnished to any one, and that the currency in which said invoice is made out is that which was actually paid for said merchandise.

And I further declare that it is intended to make entry of said merchandise at the port of New York in the United States of America.

F. COSTA,
Purchaser.

I, FELIX W. PRESTON, Acting Consular Agent of the United States at Ponce, P. R. DO HEREBY CERTIFY that at Ponce, P. R., on this 9th day of February Anno Domini, 1893, the within invoice num- 944
bered 15, in which are mentioned and described certain 75 casks molasses amounting with the charges thereon to the total sum of $4,155.68 Mexican specie, was produced to me by F. Costa, Esq., in person, who thereupon declared in writing in my presence that entry of said merchandise was to be made at the port of New York in the United States of America.

I DO FURTHER CERTIFY that I am satisfied that the person making the declaration hereto annexed is the person he represents himself to be, and that the price stated in said invoice represents the actual market value or wholesale price of the merchandise 945
described in the said invoice in the principal markets of the country at the time of exportation, excepting as noted by me upon said invoice or respecting which I shall make special communication to proper authority.

WITNESS my hand and seal of office at Ponce, Island of Porto Rico, the day and year aforesaid.

F. W. PRESTON,
Acting Consular Agent of the
United States of America.

946 E. G. TURNER, being duly sworn and examined as a witness for the libellants, testifies:

By Mr. Parkin:

Q. You are one of the weighers of the American Sugar Refining Company? A. Yes, sir.

Q. Did you weigh some of the cargo of the *Centurion* when she arrived here in the latter part of February or early part of March this year? A. I did.

Q. Did you weigh some of the sugar which was shipped by Bregaro? A. I weighed 43 hogsheads of that sugar.

Q. That was sugar which was marked with the
947 letter B was it not? A. $\frac{B}{\text{New York,}}$ yes, sir.

Q. All of that sugar that came on the *Centurion* was weighed at the Sugar Refinery, was it not? A. Yes, it was all weighed there.

Q. Have you with you the weights of all the sugar that was marked $\frac{B}{\text{New York?}}$ A. Yes, what I weighed I have.

Q. Some of the hogsheads came full and in good condition, did they not? A. Yes, sir.

Q. And some partly empty? A. Yes, sir; some half full.

Q. And some entirely empty? A. Yes, sir.

948 Q. Will you tell me how many came in good condition of the Bregaro sugar? A. 379 hogsheads were sound.

Q. And what was the gross weight of those? A. 632,184.

Q. What was the tare of those? A. 78,984 pounds.

Q. What was the net? A. 553,200.

Q. How many hogsheads were empty? A. Ten empties altogether.

Q. And how many partly empty? A. Seventy-six hogsheads damaged; 76 were partly empty, all told.

Q. What was the gross weight of those 76? A. 949
105,756.

Q. And the tare? A. 16,865.

Q. And the net? A. 88,891.

Q. Did you see the sugar that was in the partly emptied hogsheads, those which you call damaged? A. I saw the sugar that was running; it was sort of drainage, molasses.

Q. It was wet, soggy sort of sugar? A. Yes, sir.

CROSS-EXAMINED by Mr. Kneeland:

Q. How many of these hogsheads which were partly empty did you weigh? A. Forty-three I weighed, and another gentleman weighed the rest, the balance of them; 76 all told. 950

Q. Were the 43 that you weighed partly empty or were they sound? A. They were partly empty.

Q. The whole of the 43? A. Yes, sir.

Q. Have you a record of each one there? A. Yes, sir.

Q. Did you see the others which you did not weigh? A. Yes.

Q. Have you any memorandum in this record that you have of the nature of the damage to these hogsheads? Can you tell from your record that you hold in your hand or in any other way how many of these 76 hogsheads were broken and how many had the heads out? A. No, sir; I couldn't tell that.

Q. You have nothing by which you can show 951
that? A. No, I don't know anything at all about it; I couldn't tell that.

Q. There was no memorandum on the record as to the character of the damage? A. No memorandum, only there were eight hogsheads empty; some were broken and some no heads at all in; that is all that I know.

Q. There is always a certain amount of loss by drainage on sugar of this character arriving here, is there not? A. Not always.

952 Q. How is it about sugar arriving at that time of year, February and March, muscovado sugar; isn't there always more or less loss from drainage? (No answer.)

Q. Can you tell what the average percentage of drainage is on that amount of sugar? A. No, sir, I cannot. I can't answer that question at all.

CROSS-EXAMINED by Mr. Kirlin:

Q. Were any of the 76 hogsheads that were slack damaged? A. I don't know whether they were damaged or not; I couldn't answer that. All I know that there were molasses and they were draining.

953 Q. You said ten were entirely empty and of those ten some had the heads knocked in and some had the staves broken in? A. Yes, sir.

Q. You said there were 76 that were slack, light in weight; do you know whether any of those had the heads knocked in? A. Some of them may have had the heads knocked in, yes, a few of them; perhaps a piece of the head was sticking out, or something like that, sir. That may have been; I didn't take particular notice of that.

By Mr. Parkin:

Q. Your business is simply to weigh the sugar? A. Yes, sir, that is all; don't know anything about
954 the sample, whether it is damaged or anything else; the sampler decides that.

By Mr. Kirlin:

Q. Did the slackage appear to be uniform in the different hogsheads, just look at your book, in the 76? A. They vary very much, those hogsheads do themselves, in weight, in their capacity. Some are small and some are large, and you can tell offhand from my figures whether the loss was uniform or not.

Form D., 1892. 955

MILLER, BULL & CO.,
NEW YORK.
Cable Address, "DAFTON"—New York
Use Watkins' Code and Appendix.

Claimant's Exhibit 1.

TIME CHARTER.

This Charter Party, made and concluded upon in the City of NEW YORK, the 27th day of September, 1892, between J. M. Ceballos & Co., agents for owners of the good British Steamship called *Centurion*, of Sunderland, 1942 Tons gross Register, and 956
1233 Tons net Register, 170 horses power, provided with Steam Winches and Board of Trade Certificates for Hull and Machinery classed 100A, 1. Br, at Lloyd's Years; warranted to carry abt. 3050 Tons dead weight and abt. 3550 tons measurement inclusive of bunkers now trading and The New York & Porto Rico SS. Co. Charterers.

WITNESSETH, that the said Owners agree to let, and the said Charterers agree to hire the said Steamship for the term of Six Calendar Months from the day of her being (after docking and cleaning bottom) placed at the disposal of the Charterers, at New York, in such Dock or at such Wharf or place (where she may always safely lie afloat, at all times 957
of tide), as Charterers may direct, she being then ready to receive Cargo; and being tight, staunch, strong, and every way fitted for the service, having Water Ballast and Steam Winches and Donkey Boiler, with capacity to run all the Steam Winches, at one and the same time, and necessary dunnage (and with full complement of officers, seamen, engineers and firemen for a vessel of her tonnage); to be employed in carrying LAWFUL MERCHANDISE, including Petroleum, or its products, mails (and passengers, so far as accommodations will permit) between—United Kingdom, Continent of Europe,

958 United States, Central and South America (not south of the River Plate), West Indies, Gulf of Mexico, Brazils and St. Lawrence excluded, as the Charterers or their Agents shall direct, on the following conditions:

Owners to have option of docking ship in United Kingdom before she sails to enter upon this charter.

1. That the Owners shall provide and pay for all the provisions, wages and Consular shipping and discharging fees of the Captain, Officers, Engineers, Firemen and Crew; shall pay for the insurance of the Vessel; also for all Ship, Cabin, Engine room and Deck stores, and maintain her in a thoroughly efficient state in hull and machinery for and during
959 the service, and victual and provide for all passengers in the best manner, according to their class. Charterers to pay for victualing Cabin Passengers at the rate of , for Steerage Passengers per day for each adult; children half price.

2. That the Charterers shall provide and pay for all the Coals, Port Charges, Pilotages, Agencies, Commissions, and all other Charges whatsoever, except those before stated. That the Charterers shall accept and pay for all Coal in the Steamers' Bunkers on delivery, and the Owners shall, on the expiration of this Charter Party, pay for all Coal left in the Bunkers, each at the current market prices at the respective Ports when she is delivered to
960 them.

3. That the Charterers shall pay for the use of said Vessel Seven Hundred & forty pounds Sterling (£740) lump sum per Calendar Month, commencing at 12 o'clock noon (after entry at the Custom House) with clear holds at Charterers' disposal, as above, and after the same rates for any part of a Month used to complete a voyage; hire to continue from the time specified for terminating the Charter, until her delivery to Owners (unless lost) at a Port on the East Coast of the United States, North of Hatteras. The Steamer to be delivered to the Charterers not before January 10th, 1893, Charterers to have

A true copy of the Original Stamped Charter Party in our possession.

option of cancelling this Charter if Steamer is not 961
delivered as above on January 25th, 1893.

4. Payment of said Hire to be made in Cash at New York at the current short sight rate of Exchange, monthly in advance; and in default of such payment the Owners shall have faculty of withdrawing the said Steamer from the service of the Charterers without prejudice to any claim they, the Owners, may otherwise have on the Charterers, in pursuance of this Charter.

5. That should the Steamer be on her voyage toward the port of return delivery, at the time a payment of hire comes due, said payment shall be made for such a length of time as Owners' Agents and Charterers or their Agents, may agree upon as the 962
estimated time necessary to complete the voyage; and when the Steamer is re-delivered to Owners' Agents, any difference shall be refunded by Owners, or paid by Charterers, as the case may require.

6. That the cargo or cargoes shall be loaded and discharged in any dock, or at any wharf or place that Charterers may direct, where the Steamer can always safely lie afloat. Steamer to work night and day if required by Charterers, and all Steam Winches to be at Charterers' disposal during loading and discharging. Steamer to provide men to work Winches, both day and night if required, Charterers agreeing to pay the Winch men for work done at night; in the event of short steam or 963
a disabled Winch or Winches, Owners to pay for shore engine or engines required in lieu thereof.

7. That the whole reach, burthen and passenger accommodation of the Ship (not being more than she can reasonably stow and carry) shall be at the Charterers' disposal, reserving only proper and sufficient space for the Ship's officers, crew, tackle, apparel, furniture, provisions and stores.

8. That the Captain shall prosecute his voyages with the utmost dispatch, and shall render all customary assistance with Ship's crew, winches and boats, and proceed to Sea when ordered, or on the

964 next tide, unless prevented by sufficient reasons, which shall be furnished in writing to the Charterers.

9. That whilst the steamer is in West Indian, Central or South American ports the crew shall not be allowed on shore. The Ship to be liable for any delay of quarantine arising from a violation of this clause.

10. That the Owners shall be liable for time lost by any detention by Customs authorities caused by smuggling on the part of officers or crew.

11. That the Steamer shall be docked, scraped and painted at least once in each six months during the continuance of this Charter. Time lost in docking
965 to be allowed to Charterers.

12. That the Captain shall be under the orders and direction of the Charterers, and shall sign Bills of Lading as presented (the act of God, the Queen's enemies, fire, restraint of Princes, rulers and people, and all other dangers and accidents of the seas, rivers and steam navigation being excepted therein), at any rate of freight without prejudice to this Charter; and the Charterers hereby agree to indemnify the Owners from all consequences or liabilities that may arise from the Captain signing Bills of Lading by the Charterers' instructions.

13. That if the Charterers should have reason to be dissatisfied with the conduct of the Captain, Officers
966 or Engineer, the Owners shall, on receiving particulars of the complaint, investigate the same, and, if necessary, make a change in the appointment.

14. That the Master shall be furnished from time to time with all requisite instructions and sailing directions, and shall keep a full and correct Log of the voyage or voyages, which is to be patent to Charterers or their agents, and at the end of each round trip the Captain shall give an abstract copy of the same to the Charterers.

15. That the Charterers shall have permission to appoint a Supercargo $\frac{\text{and}}{\text{or}}$ Purser, who shall accompany the Steamer, and be furnished with first-class

fare and accommodation, free of charge to Char- 967
terers and see that the voyages are prosecuted with the utmost dispatch.

16. That the Charterers shall have permission to put in additional ventilating arrangements, if desired, but the ship to be returned to owners in the same condition as when delivered, unless Owners desire to retain the new arrangements, remunerating Charterers for the expense.

17. Owners to provide rope, falls, block and slings necessary for handling ordinary cargoes up to three ton weight.

18. That the Charterers shall have the option of continuing the Charter for the further period of six months on giving notice thereof to Owners Fifteen 968
days previous to expiration of each named term.

19. That loss of time from a deficiency of men or stores, or from any defect or break down of machinery, damage or accident to the vessel, which prevents the working of her for 24 hours, shall be for account of the Owners, and in such case the payment or hire shall cease from the commencement of the loss until she be again in a proper and efficient state to resume her service and should she in consequence put into any other Port other than that to which she is bound, the Port Charges and Pilotages at such Port shall be borne by the Steamer's Owners; but should the vessel be driven into port or to anchorage by stress of weather, or from any accident to the cargo, 969
such detention or loss of time shall be for the Charterers' account.

20. That should the vessel be lost, any hire paid in advance, and not earned (reckoning from the date of her loss), shall be returned to the Charterers, with interest from date of loss. The act of God, the Queen's enemies, fire, restraint of Princes, rulers and people, and all other dangers and accidents of the seas, rivers and steam navigation shall excuse a compliance with this Charter.

21. That the Charterers shall not be responsible for losses incurred by reason of the default or neg-

970 lect of the Pilot, Master or crew in the navigation or management of the Ship—including damages by collision; but no claim to be made against Owners for loss of Cargo.

22. That the Owners shall haue a lien upon all sub-freights, for charter money due under tthis Charter; and Charterers shall have a lien on the Ship for cash advanced and for all charter-money paid that has not been earned.

23. All derelicts, salvage and towage to be for Owners' and Charterers' equal benefit. Penalty for non-performance of this contract, estimated damages.

24. That should any dispute arise between the Owners and the Charterers, the matter in dispute
971 shall be referred to three persons in the United States, one to be appointed by each of the parties hereto and the third by the two so chosen, their decision, or that of any two of them, shall be final, and for the purpose of enforcing any award this agreement may be made a rule of Court.

25. Five per cent. commission on gross amount of this Charter is due, on signing of this Charter Party, to J. M. Ceballos & Co., Steamer lost or not lost, Charter cancelled through steamer missing cancellation date, or any fault of owners in keeping with this Charter Party.

26. An address commission of 2½% is payable by owners to The New York & Porto Rico Steamship Co.

972 By cable authority from Messrs. Wrenn & Co.

Dated, London, Sept. 27th, 1892.

(Sgd.) J. M. Ceballos & Co.,
Agents.

" The New York & Porto Rico Steamship Co.,
Henry T. Knowlton,
Treasurer.

Signed in the presence of:
(Sgd.) Fred. R. Rohl.
Signed in the presence of:
(Sgd.) C. Alex. Cook.

The rate on SUGAR, COFFEE and ANNATO is on Invoice weight shipped. Weight to be stated in pounds on Bill of Lading. If weight delivered is more than stated on Bill of Lading, Steamer may charge freight on corrected weight, with 50 per cent. additional.

NEW YORK & PORTO RICO STEAMSHIP CO.

[VIGNETTE]

GENERAL AGENTS,

MILLER, BULL & CO.,

NEW YORK.

Marks and Numbers:

B	No. 1.	139	Hhds.
New York	" 2.	123	"
Porto Rico	" 3.	17	"
	" 4.	61	"
	" 5.	37	"
	" 6.	40	"
	" 7.	48	"
		465	Hhds.

Freight is to be paid at the rate of seventeen cents per one hundred pounds nett weight delivered. The steamer has to discharge these sugars at the Refineries wharf.

Freight ..... *lbs.* .....

Freight .....

Charges .....

Primage .....

GOLD, $ .....

(Endorsed)—A. Hartmann & Co., as Agents for Bregaro & Co.—The American Sugar Refining Co., by R. de Wardner, Attorney.

Not Responsible for Breakage, Leakage, Dentage or condition of contents.

Claiman

aimants' Exhibit No. 2.

Received, in apparent good order, and well conditioned, from A. Hartman & Co., as agents for Bregaro & Co., to be transported by the good Steamship *Centurion*, now lying in the port of Arroyo, Porto Rico, and bound for New York (with liberty to call at any Port or Ports for whatsoever purpose, to sail with or without Pilots, and to tow and assist vessels in all situations). To say:

Four hundred and sixty-five Hogsheads sugar under deck.

All cargo to be shipped by Agents of the Steamer at Shipper's risk and expense.

Ship not responsible for contents of this Bill Lading unless actually aboard same, even if Bill Lading has been signed.

Ship not responsible for quality or condition of Coffee, or for stains on the packages.

Not responsible for marks.

Any fines imposed on Steamer through errors in manifesting as per this Bill Lading will be for account of goods, Shippers and Consignees.

(This Steamer has the right to pass the aforesaid port of destination, or to carry on and discharge said Merchandise on a subsequent trip and also the privilege to transfer said Merchandise to another Steamer.)

If Steamer cannot discharge within goods on present trip at aforesaid port of destination, and they are landed at another port for another Steamer of line, to take them on to aforesaid port of destination, it is agreed that within goods pay the Steamer's expenses incurred at the port of transferring the same.

Being marked and numbered as per margin to be conveyed upon the said steamship unto the aforesaid port of destination (or so near thereto as she may safely get) in like good order and condition (the act of God the country s enemies, restraint of governments, pirates, robbers, thieves, vermin, jettison, barratry, and collision, fire at sea or in port, and all accidents, loss, and damage whatsoever from machinery, boilers, and steam navigation, or from perils of the seas and rivers, or from any act, neglect, or default whatsoever of the Pilot, Master, or Mariners being excepted) neither the ship nor the owners being liable, and there to be delivered within reach of the Steamship's tackle, unto order or his or their assigns, upon the immediate payment by him or them of Steamship freight and charges, as entered in the margin hereof, with primage and average accustomed.

It is expressly stipulated that the articles named in this Bill of Lading shall be at the risk of the owner, shipper and consignee thereof, as soon as delivered from the tackles of the Steamer in the aforesaid port of destination; and they shall be received by the consignee thereof, package by package, as so delivered; and if not taken away without delay, they may (at the option of the Steamer's agent) be sent to store, permitted to lie where landed, or returned to the port of shipment, at the expense of the aforesaid owner, shipper or consignee.

The ship owner is not to be liable for any damage to goods which are capable of being covered by insurance.

In case any claim shall arise against the steamship or the owners thereof, for any loss or damage accruing to the above merchandise while on the voyage, such claim (in all cases to be based on the value of the articles at the port of shipment; upon the date of shipment) shall be preferred at the office of the agent for the Steamship in aforesaid port of destination within three days after the merchandise shall have been delivered. And in case such claim, whatever it may be, shall not be preferred within the time and at the place designated, such loss or damage shall be deemed to be waived, and the steamship and the owners thereof shall be discharged therefrom. And it is further expressly stipulated, that in case the Steamship shall be detained at the quarantine for the aforesaid port of destination, and there discharge the articles named in this Bill of Lading, that all risk and liability to the Steamship, or to the owners thereof, shall cease, and the obligations of the Steamship under this Bill of Lading, be deemed to have been fully accomplished when the article shall have boen delivered from the tackles of the Steamship, and all risk and expense incurred thereafter shall be on account of the aforesaid owner, shipper or consignee. weights, contents, and value unknown, and not answerable for leakage, rust, heat, breakage or natural decay of goods, or damage to the packages from the said causes, or for unadvoidable exposure to weather; and that the Steamship and the owners thereof shall not be responsible for gold, silver, precious stones, or metals, jewelry, nor treasure of any kind, nor for more than $100 for any single package or part thereof, unless both shipping permit and Bills of Lading specify greater value

The Collector of the Port is hereby authorized to grant a general order for discharge immediately after the entry of the Steamship at the Custom House.

AND, FINALLY, in accepting this Bill of Lading, the Shipper, Owner and Consignee of the goods agree to be bound by all its stipulations, exceptions and conditions, whether written, printed or stamped, as fully as if they were all signed by such Shipper, Owner or Consignee.

No Bill of Lading is signed for a less sum than $5.25.

IN WITNESS WHEREOF, the Master or Agent of said Steamship hath signed six Bills of Lading, all of this tenor and date, one whereof being accomplished, the others to stand void.

Dated at Arroyo, P. Rico, this 13th day of Feb., 1893.

J. W. MALONEY,
Purser.

Not Responsible for Breakage, Leakage, Dentage or condition of contents.

The rate on SUGAR, COFFEE and ANNATO is on invoice weight shipped. Weight to be stated in pounds on Bill of Lading. If weight delivered is more than stated on Bill of Lading, Steamer may charge freight on corrected weight, with 50 per cent. additional.

NEW YORK & PORTO RICO STEAMSHIP CO.

[VIGNETTE]

GENERAL AGENTS,

MILLER, BULL & CO.,

NEW YORK.

Marks and Numbers:

BREGARO & Co.

Ponce Pto. Rico C 75 casks New York	Ponce Pto. Rico F 100 casks New Haven	Ponce Pto. Rico. F 75 casks. New York

Freight.....*ft.*.....

Freight.....*lbs.*.....

Freight $2\frac{1}{4}$ per 110 gls. landed guage (gross).

Charges.....

Primage.....

GOLD, $.....

Claim

Not Responsible for Breakage, Leakage, Dentage or condition of contents.

aimants' Exhibit No. 3.

Received, in apparent good order, and well conditioned, from Bregaro & Co., to be transported by the good STEAMSHIP "*Centurion*," now lying in the port of Ponce, P. R., and bound for New York (with liberty to call at any Port or Ports for whatsoever purpose, to sail with or without Pilots, and to tow and assist vessels in all situations). To say:

(250) Two Hundred and Fifty Casks molasses under deck.

All cargo to be shipped by Agents of the Steamer at Shipper's risk and expense.

Ship not responsible for contents of this Bill Lading unless actually aboard same, even if Bill Lading has been signed.

Ship not responsible for quality or condition of Coffee, or for stains on the packages.

Not responsible for marks.

All cargo to be landed at steamer's wharf in New York, or at any wharf in Brooklyn, at steamer's option, or consignees to lighter cargo without delay, if required.

Any fines imposed on Steamer through errors in manifesting as per this Bill Lading will be for account of goods, Shippers and Consignees.

(This Steamer has the right to pass the aforesaid port of destination, or to carry on and discharge said Merchandise on a subsequent trip, and also the privilege to transfer said Merchandise to another Steamer.)

If Steamer cannot discharge within goods on present trip at aforesaid port of destination, and they are landed at another port for another Steamer of line, to take them on to aforesaid port of destination, it is agreed that within goods pay the Steamer's expenses incurred at the port of transferring the same.

Being marked and numbered as per margin to be conveyed upon the said steamship unto the aforesaid port of destination (or so near thereto as she may safely get) in like good order and condition ithe act of God, the country's enemies, restraint of governments, pirates, robbers, thieves, vermin, jettison, barratry, and collision, fire at sea or in port, and all accidents, loss, and damage whatsoever from machinery, boilers, and steam navigation, or from perils of the seas and rivers, or from any act, neglect, or default whatsoever of the Pilot, Master, or Mariners being excepted,) neither the ship nor the owners being liable, and there to be delivered within reach of the Steamship's tackle, unto order, or his or their assigns, upon the immediate payment by him or them of Steamship freight and charges, as entered in the margin hereof, with primage and average accustomed.

It is expressly stipulated that the articles named in this Bill of Lading shall be at the risk of the owner, shipper and consignee thereof, as soon as delivered from the tackles of the Steamer in the aforesaid port of destination; and they shall be received by the consignee thereof, package by package, as so delivered; and if not taken away without delay, they may (at the option of the Steamer's agent) be sent to store, permitted to lie where landed, or returned to the port of shipment, at the expense of the aforesaid owner, shipper or consignee.

The ship owner is not to be liable for any damage to goods which are capable of being covered by insurance.

In case any claim shall arise against the steamship or the owners thereof, for any loss or damage accruing to the above merchandise while on the voyage, such claim (in all cases to be based on the value of the articles at the port of shipment; upon the date of shipment) shall be preferred at the office of the Agent for the steamship in aforesaid port of destination within three days after the merchandise shall have been delivered. And in case such claim, whatever it may be, shall not be preferred within the time and at the place designated, such loss or damage shall be deemed to be waived, and the steamship and the owners thereof shall be discharged therefrom. And it is further expressly stipulated that in case the Steamship shall be detained at the quarantine for the aforesaid port of destination, and there discharge the articles named in this Bill of Lading, that all risk and liability to the Steamship, or to the owners thereof, shall cease, and the obligations of the Steamship under this Bill of Lading, be deemed to have been fully accomplished when the article shall have been delivered from the tackles of the Steamship, and all risk and expense incurred thereafter shall be on account of the aforesaid owner, shipper or consignee, weights, contents, and value unknown, and not answerable for leakage, rust, heat, breakage or natural decay of goods, or damage to the packages from the said causes, or for unavoidable exposure to weather; and that the Steamship and the owners thereof shall not be responsible for gold, silver, precious stones, or metals, jewelry, nor treasure of any kind, nor for more than $100 for any single package or part thereof, unless both shipping permit and Bills of Lading specify greater value.

The Collector of the Port is hereby authorized to grant a general order for discharge immediately after the entry of the Steamship at the Custom House.

AND, FINALLY, in accepting this Bill of Lading, the Shipper, Owner and Consignee of the goods agree to be bound by all its stipulations, exceptions and conditions, whether written, printed or stamped, as fully as if they were all signed by such Shipper, Owner or Consignee.

No Bill of Lading is signed for a less sum than $5.25.

IN WITNESS WHEREOF, the Master or Agent of said Steamship hath signed five Bills of Lading, all of this tenor and date, one whereof being accomplished, the others to stand void.

Dated at Ponce, P. R., this 9th day of February, 1893.

p. p. FRITZE LUNDT & CO.,
JUL. UMBOCH, as Agents.

☞ Not Responsible for Breakage, Leakage, Dentage or condition of contents.

UNITED STATES DISTRICT COURT, 973

SOUTHERN DISTRICT OF NEW YORK.

JOSE BREGARO

vs.

The Steamship "CENTURION" and THE NEW YORK AND PORTO RICO STEAMSHIP COMPANY.

974

AMERICAN SUGAR REFINING COMPANY

vs.

THE SAME.

In Admiralty—Damage to Cargo.

MACFARLAND & PARKIN, for the Libellants.
CONVERS & KIRLIN, for the Claimants.
GEORGE A. BLACK, for the Charterers.

975

BROWN, *J.*—The first of the above libels was filed to recover for the loss, through alleged bad stowage, of a portion of 250 casks of molasses, stowed in the between-decks of the steamship *Centurion* on her voyage from Ponce, Porto Rico, to New York in February, 1893.

The second libel was to recover for damages caused to some sugar stowed in the hold beneath the molasses and damaged by the leaking of molasses through the between-decks above. The shipowners denied negligence, and alleged rough weather and peril of the seas as the cause of the loss. After the arrest

976 of the *Centurion*, the New York and Porto Rico Steamship Company was brought in as defendant in the second libel upon the petition of the owners of the *Centurion*, upon the analogy of the 59th Rule, showing that the steamship was at the time under a charter to the last named company, under whose servants and agents exclusively her cargo was stowed, and alleging that there was no fault or negligence in the owners, but, if any, in the charterers only, and that the latter were personally bound to pay any damages arising therefrom, and to indemnify the shipowners against it. Various exceptions in the bill of lading were also set up. The charterers, in answer to the petition,
977 alleged that the damage arose through the defective condition of the ship's decks, bilges, scuppers, sluiceways and bulkhead and a neglect of the pumps. The evidence shows that the vessel was let to the charterers for a term of six months, at the rate of £740 per month; that the owners should provide and pay for provisions and wages of the captain, officers and crew; for insurance of the vessel and some other charges; for coal, &c.; and that the captain was to be "under the orders and direction of the charterers," who were "to indemnify the owners from all consequences or liabilities that may arise from the captain in signing bills of lading;" that the charterers should "not be responsible for losses
978 incurred by reason of default, &c., of the pilot, master or crew in the navigation of the ship, including damages by collision; but no claim to be made against owners for loss of cargo;" "all derelicts, salvage and towage to be for owners' and charterers' equal benefit;" "if the charterers should be dissatisfied with the conduct of the captain, officers or engineers, the owners, on receiving the particulars of the complaint, were to investigate, and, if necessary, make a change in the appointment."

The bills of lading were not signed by the master, but by the agent of the charterers. The stowage of the cargo was attended to by a supercargo

appointed by the charterers, in accordance with the terms of the charter; and the supercargo insisted upon stowing the molasses in the between-decks, contrary to the advice of the officers. Soon after starting, in moderate weather, some of the hogsheads were found to be rolling, and some additional chocks were applied. On the third day out, in a moderate gale, but in a cross sea, the ship took a heavy lurch to starboard, by which the hogsheads in No. 2 'tween-decks hold were so shifted and lodged in the starboard wing that the vessel did not right, but kept a list of about three feet to the starboard through the rest of the voyage. On arrival at New York after a voyage of nearly eight days, 88 casks of molasses out of the 250 were found broken and empty; and in others there was a partial loss from being adrift and more or less turned over, causing leakage through the open vent holes. The molasses ran down the pipes into the No. 2 hold beneath, along the sides of the ship, so as not to injure the upper tiers of sugar; but the lower tiers were damaged and partially dissolved through the swashing of the molasses from side to side at the bottom, where it accumulated to a depth of from one to two feet. 979 980

It is clear that the loss of the molasses in the No. 2 'tween-decks, as well as the damage to the sugar in the hold beneath, arose primarily from the extraordinary drainage; and that this was caused by the shifting of the molasses casks in No. 2 'tween-decks, upon the lurch of the ship, by which many of the casks then and subsequently were broken to pieces. A secondary cause of the loss of the sugar was that the sluiceways in the hold beneath became choked. 981

The question whether the shifting of the cargo is fairly to be ascribed to sea perils or to the defective stowage of the molasses has been most assiduously treated by counsel. Upon a careful study of the testimony I am constrained to find that it arose from the place and mode of stowage, and that the stowage was not reasonably sufficient to meet ordi-

982 nary rough weather such as was to be reasonably anticipated and provided for. The respondents' witness Butler, a stevedore, testified: "We are supposed to have everything well stowed and secure against ordinary rough weather—no hurricanes though." On the occasion when the molasses shifted the weather did not approach a hurricane. It was rough, but no more than a gale, such as is often encountered with cross seas. The weather was not extraordinary; and before any rough weather was encountered the movement of the casks in No. 2 'tween decks was observed, which the supercargo sought to check.

It is suggested that the shifting of the cargo may
983 not have been caused by any lack of proper dunnage or quoins, but from the width of No. 2 hold, which was without supports where the hogsheads lay in tiers of 10 casks; and that as the ship rolled the weight of the nine hogsheads upon the one next to the wing was enough to break those hogsheads from the mere weight of the tiers. This hypothesis is to some extent sustained by the fact that in No. 3 'tween-decks, where there was support from stanchions, there was no shifting or breakage. I do not see, however, that this hypothesis, even if correct, relieves the respondents. For it was their duty to stow properly and securely in the place selected for stowing the molasses; and if supporting
984 stanchions to divide the weight of the casks were needed for security in ordinary rough weather, then they were bound to provide proper stanchions. The officers objected to stowing the molasses in the 'tween-decks of this slip, where the width was greater than in the hold, the support less, and any rolling more heavily felt. Though molasses, as appears from the evidence, is sometimes carried in the 'tween-decks, it does not appear what additional precautions in such cases are taken to prevent shifting or breakage. If the supercargo had a right to stow in the 'tween-decks, where the liability to shifting and breakage was greater, he was bound to provide the

additional precautions to make that place secure against ordinary rough weather. The fact, however, that some rolling of the hogsheads was perceived and complained of soon after the voyage began, and before any rough weather was experienced, shows that the stowage was defective from the first, and discredits the hypothesis that the mere weight of the casks in the rolling of the ship was the cause of the derangement and shifting of cargo. The *Burgundia*, 29 Fed. Rep., 607; The *Barracouta*, 40 do., 498; The *Timor*, 46 do., 859; The *Glamorganshire*, 50 do., 840; The *Mascotte*, 51 do., 605, 2 C. C., 399; The *Maggie M.*, 30 Fed. Rep., 692; The *E. I. Morrison*, 27 do., 136, 141. 985

For the bad stowage, which was the cause of the loss, the charterers and not the ship as between themselves are primarily responsible. The supercargo was the special representative of the charterers, and the cargo was stowed by his orders, and under his direction. The loss of sugar was the immediate result of the great accumulation of molasses which ran into the hold below. If this result might have been avoided by ordinary skill and diligence on the part of the ship's officers and crew, by keeping the bottom clear of molasses by pumping, no doubt the ship would have been primarily chargeable for so much of the loss as arose through lack of pumping (the brig *Sloga*, 10 Ben., 315, 320). But the evidence leaves no doubt that the sluiceways became so choked that nothing could be drawn up by the pumps after the inundation of the hold. The charterers claim that the sluiceways and limbers became choked because certain sweepings of soda and bleaching powder were left in the ship from the previous voyage, and not cleaned out as they should have been when she was delivered to the charterers in New York; that those sweepings, combining with the molasses, produced quickly a hard cement, which choked up the passages, and that the owners had agreed to deliver the ship to the charterers in good condition and properly cleaned. The evidence shows 986 987

988 that the vessel had been cleaned out and was in a generally fair condition before delivery to the charterers, but that some portions of the soda ash, &c., were not removed. The vessel when tendered was, however, inspected by the charterers, and thereupon accepted without objection. The formation of a cement, in combination with leaking molasses, in a second loading afterwards, is so remote and indirect a consequence as not to involve the ship in responsibility for a loss arising from such a cement, if that was the cause of choking. If the ship was not properly cleaned when tendered in New York, it was for the charterers to object at that time, or to complete the cleaning themselves and charge the expense to
989 the ship. The latter would be the legal measure of damage from that neglect, if any (Stewart *vs.* West. Union R. R., 4 Biss., 362, 363).

I do not find upon the testimony any evidence of negligence in the management of the ship for which her owners are responsible that contributed to this loss. The charterers by the terms of the charter became the owners *pro hac vice* as respects all matters pertaining to the handling and delivery of cargo; but not as regards the navigation of the ship, for which, under the express terms of the charter, the owners remained the responsible principals. As this loss arose from the improper storage of the molasses
990 and the extraordinary drainage consequent thereon, and not from any fault in the management of the ship, the charterers are primarily answerable for the loss both of the molasses and of the sugar.

The bill of lading in this case was not signed by the master but by the agents of the charterers. It is on that ground contended in behalf of the ship that she is not chargeable, even secondarily, for this loss; that the shipper and the libellants were put upon inquiry, and were therefore chargeable with notice of the charter and of its special provision, that "no claim was to be made against owners for

loss of cargo," and the analogy of various decisions as regards supplies of coal to chartered vessels is cited in support of this view. 991

I cannot sustain this contention. In the first place the provision that "no claim is to be made against owners for loss of cargo" is shown by its context to be nothing more than a stipulation between the owners and the charterers, adjusting their liabilities upon the voyage as between themselves; it has no relation to claims of the shippers of cargo against the ship for any negligent performance of the duties which the law imposes on the ship as a common carrier. The analogy to cases of supplies, moreover, wholly fails in this important particular; that here the ship was let to the charterers for the very purpose of carrying cargo, and for aught that appears with the usual mutual lien, which the law gives as between ship and cargo. The charter makes the charterers the owners *pro hac vice* as respects the transportation of cargo, and by necessary implication authorizes freights upon those usual terms. The charter even expressly provides that the owners shall have "a lien upon all sub freights." In the cases of supplies of coal by charterers, on the other hand, there is no such authority from the owners, express or implied, to purchase coal on the ship's account, but the contrary. The charter contains nothing that even by implication excludes the ordinary security of a lien in favor of the cargo against the ship for the performance of the ship's duties in the business for which she was chartered. The ship is therefore liable for bad stowage, because the duty to stow properly is one of the duties of carriage which the owner has expressly authorized (Freeman *vs.* Buckingham, 18 How., 182; Niagara *vs.* Cordes, 21 do., 7). The ship is liable for damage from bad stowage, whether the stowage is done by the owners' agent or the charterers', and equally so whether there is any bill of lading given or not. It was therefore immaterial whether the bill of lading was signed by 992 993

994 the master or by the charterers (*The Euripides*, 52 Fed. Rep., 161, 163, and cases there cited; *The Keystone*, 31 do., 412, 416; affd. on appeal).

The result is that the libellants are entitled to a decree against both the ship and the charterers for the damages sustained, but as the shipowners are entitled to be indemnified by the charterers the decree will provide that the damage be collected in the first instance from the charterers, and that any amount not collectible from them shall be paid by the ship; and that the shipowners recover against the charterers such sum as they may be called upon to pay, with costs.

995 June 17, 1893.

Re "CENTURION."

Memorandum.

BROWN, *J.*—The subjects referred to in the brief submitted on motion for reargument are the same which were considered, and which are briefly referred to in the decision. The argument of counsel is almost wholly theoretical. There is absolutely no evidence that I have found, or upon reargument, to which I have been referred, testifying to anything 996 different from solidified sugar or settlings of sugar.

What is spoken of by the mate, Chesney, as being "solid" he says had "a feeling of stickiness to the fingers; you could see it was sugar; it was the color of sugar." Counsel objects that the witness did not taste of it, and for lack of that it was argued that because it was hard and solid it must have been a chemical compound of soda ash or other chemicals not swept out, and of molasses like what was exhibited in Court. No such substance as exhibited was produced from the ship, and the counsel's argument seems to me to rest upon theory alone. That

the hard matter was sugar settlings is borne out by 997
the testimony of two senses—of feeling and of sight. I do not think this is to be discarded, because the witness did not add the third sense of taste, and it should stand as against any more mere theoretical possibilities not substantiated by any one of the senses.

I do not think, moreover, that any mere imperfections in clearing out the dust or settlings of the former cargo, such as these sweepings, or even such settlings in the bilges, easily open to examination, constitute unseaworthiness, even though unseaworthiness might be subsequently produced by chemical combinations with leaking portions of a subsequent cargo, according to claimant's theory. I am not 998
convinced of any error or mistake in the former decision, and I must, therefore, overrule the motion.

July 14, 1893.

999

1000 At a Stated Term of the District Court of the United States for the Southern District of New York, held at the Court Rooms, in said City, on the 1st day of July, 1893.

Present.—Hon. ADDISON BROWN, *District Judge.*

JOSE BREGARO

AGAINST

The British Steamer "CENTURION" her tackle, apparel and furniture.

1001

In the Matter of the Petition of JOHN BLUMER & COMPANY, owners of the Steamship *Centurion*

AGAINST

THE NEW YORK AND PORTO RICO STEAMSHIP COMPANY.

This cause having been heard on the pleadings and proofs, and having been argued by the advocates
1002 for the respective parties, and due deliberation being had,

It is ordered, adjudged and decreed, that the libellant recover the amount of his damages sustained by him, by reason of the matters alleged in the libel, and that it be referred to Edward L. Owen, Esq., one of the Commissioners of the Circuit Court, to ascertain and report the amount of such damages, over and above the ordinary and natural loss in transportation, and that he report to the Court with all convenient speed.

[SEAL.] ADDISON BROWN.

(Endorsed.)—Interlocutory decree.—Filed July 3, 1893.

At a Stated Term of the District Court 1003
of the United States for the Southern
District of New York, held at the
Court Rooms in said City on the 1st
day of July, 1893.

Present--Hon. ADDISON BROWN, *District Judge.*

THE AMERICAN SUGAR REFINING COMPANY and JOSE BREGARO

AGAINST

The British Steamer "CENTURION," her tackle, apparel and furniture. 1004

In the Matter of the Petition of JOHN BLUMER & COMPANY, owners of the Steamship *Centurion*,

AGAINST

THE NEW YORK AND PORTO RICO STEAMSHIP COMPANY.

This cause having been heard on the pleadings and proofs, and having been argued by the advocates for the respective parties, and due deliberation being 1005 had.

It is ordered, adjudged and decreed that the libellants recover the amount of their damages sustained by them by reason of the matters alleged in the libel, and that it be referred to Edward L. Owen, Esq., one of the Commissioners of the Circuit Court, to ascertain and report the amount of such damages, and that he report to the Court with all convenient speed, without prejudice to further hearing as between ship and charterers.

ADDISON BROWN.

(Endorsed)—Interlocutory decree.—Filed July 3, 1893.

1006 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

THE AMERICAN SUGAR REFINING COMPANY and JOSE BREGARO

AGAINST

The Steamer "CENTURION."

1007

Sirs:

Please take notice that upon the annexed affidavits and all the pleadings and proceedings herein we will move this Court at a term thereof to be held at the Court Rooms in the Post Office Building, on the 27th day of February, 1894, at the opening of court on that day, or as soon thereafter as counsel can be heard, for leave to amend the libel by including therein by appropriate allegations a claim for all the sugar lost or damaged on the voyage mentioned in the original libel, and by increasing the damages claimed therefor from $2,500 to $3,000, and also by
1008 inserting a claim for such freight as was paid on sugar which was not delivered, and that the libellants may have such other and further relief as may be just.

Dated N. Y., February 21, 1894.

MACFARLAND & PARKIN,
Proctors for Libellants.

To Messrs. CONVERS & KIRLIN,
Proctors for Claimants.

GEORGE A. BLACK, Esq.,
Proctor for S. S. Co.

DISTRICT COURT OF THE UNITED STATES, 1009

SOUTHERN DISTRICT OF NEW YORK.

THE AMERICAN SUGAR REFINING COMPANY and JOSE BREGARO

AGAINST

The Steamer "CENTURION."

1010

Southern District of New York, ss.:

WILLIAM PARKIN, being duly sworn, says: I am one of the proctors for the libellants in the above entitled suit. The action was begun in March, 1893, to recover for damage to and loss of part of some sugar shipped by the libellant Bregaro in Porto Rico on the steamer *Centurion*, to be brought to New York. The vessel was under charter to the New York and Porto Rico Steamship Company, and the claimants by petition had that company made a party respondent as being ultimately liable for the claim. The bills of lading had been endorsed and delivered to the American Sugar Refining Company, and the suit was originally begun in its name, 1011 but one of the witnesses having testified that that company bought the sugar according to its net landed weight, it was thought advisable to bring in Bregaro as a party libellant, in order to avoid any possible objection on the ground that Bregaro was entitled to recover for the loss of the sugar.

This amendment was subsequently made by consent.

The captain and crew and some of the witnesses on behalf of the charterer had been examined, when deponent on or about May 19th was informed that

1012 part of the sugar which was damaged had been shipped by other shippers than Bregaro, and had been bought by the sugar company of Gossler & Company. On May 20th the captain and crew were to be again examined, and just before entering upon that examination deponent informed the proctors for the claimants and the charterers of the fact above stated, and suggested an amendment to the libel, but after discussing the matter it was agreed that it would be better to bring a new suit for the damage to the Gossler sugar. No agreement was made as to the disposition of that suit, although it was conceded according to deponent's recollection that the evidence would be identical in both cases,
1013 except as to the amount of damages. Subsequently a libel was filed to recover damages for the lot of sugar purchased of Gossler & Company, the last named firm being made a party libellant to protect any possible interest which it might have under the terms of purchase, but no proceedings have been taken beyond the filing of the libel and answer, and, as deponent is informed and believes, the filing of a petition to bring in the N. Y. and Porto Rico Steamship Company as a respondent.

The original action was heard on the merits, and a decree rendered in favor of libellants in July last; it was referred to Edward L. Owen, Esq., to take proof of the damages.

1014 On February 16th the last hearing was had before the Commissioner, and it then appeared that the contract for the purchase of the sugar was made before its arrival in New York, the American Sugar Refining Company agreeing to pay a certain price per pound to cover cost, freight and insurance, according to its net landed weight; that in accordance with the usual custom in such cases, an estimate was made of the amount of sugar which would have arrived if there had been no loss or damage, and the purchaser paid Bregaro for the amount of sound sugar so estimated, becoming thereby the sole party entitled to claim for loss and damage to the sugar.

The other sugar purchased of Gossler & Co., was 1015
purchased, as I am informed, in the same manner. The evidence established, on the trial, that the lower tier of hogsheads of sugar in holds No. 1 and 2 forward of the engine, were damaged by the molasses in the between-decks running down into the lower hold, and the Court so found. None of the evidence referred to any particular shipment of sugar, nor was any issue made as between different shipments, but the sole issue tried was whether such sugar as was damaged was damaged through negligent stowage of the molasses or not, and the only reason for bringing two suits instead of one, was that it was believed that the different shippers were interested in the recovery. It now appears that the American 1016
Sugar Refining Company is the sole party entitled to recover for all the loss and damage, it being the owner of all the cargo of sugar. Deponent therefore desires to amend the complaint by alleging that part of the damaged sugar was shipped by other shippers than Bregaro, and by increasing the amount claimed for damages, so as to include in one libel a claim for the sugar lost or damaged on the voyage.

Deponent further says that it appears from the testimony taken before the Commissioner, that the libellants paid freight for a full cargo of sugar, and deponent desires to further amend the libel by inserting an allegation to this effect, and demanding the return of the freight paid for that part of the sugar 1017
which was not delivered.

WM. PARKIN.

Sworn to before me this 21st day of February, 1894.

JOHN MCCLURE,
Notary Public,
N. Y. Co.

1018 DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

THE AMERICAN SUGAR REFINING COMPANY and JOSE BREGARO

AGAINST

The Steamer "CENTURION."

1019 Southern District of New York, ss.:

ALFRED LEROY, being duly sworn, says: I am employed in the raw sugar department of the American Sugar Refining Company, and attend to the importations of sugar when they arrive in New York, and know the terms upon which the sugar brought by the *Centurion* to New York in February, 1893, was purchased. That purchased of Gossler & Co. was bought for 3_{16} cents, cost, freight and insurance, and on its arrival in New York the American Sugar Refining Company paid for the full amount of sound sugar that would have been landed if there had been no loss or damage on the voyage.

A. LEROY.

1020 Sworn to before me this 21st day of February, 1894.

JOHN H. THOMPSON,
Notary Public,
Kings Co.,
N. Y.
Cert. filed in N. Y. Co.

(Endorsed)—Affidavit and Notice of Motion.—Filed Feb'y 27, 1894.

1021

FEBRUARY 16, 1894.

Reference proceeds before Edward T. Owen, Esq., U. S. Commissioner.

APPEARANCES:

Messrs. MACFARLAND & PARKIN, for Libellant.
Mr. BLACK, for the P. R. S. S. Co.
No one appearing for the Steamship "CENTURION."

Mr. ALFRED LEROY, a witness for the libellant, recalled:

1022 Q. Mr. LeRoy, is this document which I now show you the contract for the Bregaro sugar? (Shows paper to witness.) A. Yes, sir; the original contract.

Q. And is that the statement rendered to the American Sugar Refining Company by Bregaro upon which payment was made? A. Yes, sir; final bill; final settlement.

Q. Mr. LeRoy, for how many pounds of sugar did you pay as appears from that statement?

Objected to.
Paper offered in evidence.

A. 680,033.

1023 Q. How is that amount arrived at, will you tell me, Mr. LeRoy?

Objected to.

Q. Well, we sample the sound sugar and agree to take the average test of the seller and the buyer and the settlement is arrived at in taking the damaged sugar on the same basis as if it had been landed sound.

Q. And that is, you find what the sound sugar tests, and in paying for the sugar you agree that if

1024 the damaged sugar had arrived sound it would have borne the same test?

Objected to.

Q. Mr. Le Roy, did you in settling for this sugar pay for all the sugar according to the tests shown by the sound sugar? A. Yes, sir.

Q. And in determining the number of pounds of sugar for which you should pay, how did you arrive at that?

Objected to. Objection overruled. Exception.

A. We allow the same weight on the damaged
1025 sugar as was shown by the sound landed weighs.

Q. Do I understand from that that you take the average weight per hogshead of those hogsheads which arrive sound and multiply that by the number of hogsheads which were shipped? A. Yes, sir.

Q. The result is what you expect the shipment to turn out as if it had all arrived sound? A. Yes, sir.

Q. And that is for the amount of sugar which you pay? A. Yes, sir.

Q. And the tests on which you pay are the tests of the sound sugar along, are they?

Objected to.

A. Yes, sir.

1026 Q. Mr. Le Roy, is that the customary way of settling claims for sugar where there is any loss or damage?

Objected to.

Q. Is there any custom, Mr. Le Roy, as to the manner of determining how much sugar is to be paid for, where there has been loss or damage on the voyage.

Objected to. Objection overruled. Exception.

A. There is no other way to buy sugar, cost and 1027
freight except as sound sugar at the time of the purchase. The seller turns over the insurance policy and we pay for sound sugar, no matter what is landed.

Q. My question is as to the usual method of determining how much sugar should be landed where there has been loss on the voyage? A. By the sound only.

Q. By the average of the sound? A. Only.

Q. And in determining the tests is it always determined by the average test of the sound? A. Always.

CROSS-EXAMINATION by Mr. Black: 1028

Q. What date was this Exhibit 2 settled at? You state it was the final settlement? A. The 23d of March, 1893.

Q. And this Exhibit 2 shows that the payment made by the American Sugar Refining Company to Bregaro & Company for this cargo of sugar amounted to $20,623.53 after all allowances were made, does it not? A. Yes, sir.

Q. And the $876.47 appearing on the last line was a return of the over-payment made in pursuance of the contract that it was to be paid for on the presentation of shipping documents? A. Yes, sir.

Q. And that $876.47 was returned to the American 1029
Sugar Refining Company because it was found that they had been overpaid to that extent? A. Yes, si .

It is admitted that Bregaro & Company paid the charterers, the Porto Rico Steamship Company, as freight on the sugar for 680,026 pounds of sugar in 465 hogsheads, $1,156.04; that they paid for 250 casks of molasses, measuring 38,584 gallons, $789.21.

1030 U. S. DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

THE AMERICAN SUGAR REFINING COMPANY

vs.

THE CENTURION, her tackle, &c.

1031 MARCH 16, 1894.

APPEARANCES:

Mr. PARKIN, for Libellant.
Mr. BLACK, for the N. Y. & P. R. S. S. Co.
Mr. OWEN, Referee.

Reference proceeds.

Mr. Parkin offers in evidence a draft drawn by J. M. Ceballos & Company, accepted by the American Sugar Refining Company, dated February 27, 1893, payable March, 5, 1893, for $21,500, in payment of the sugar. He also offers in evidence the weigher's
1032 returns of the sugar in question, as shown on the annexed statement.

Statement marked Exhibit 1, March 16, 1894.

NEW YORK, January 25th, 1893.

Sold on account of Messrs. Bregaro & Co.

To the American Sugar Refining Company, about 500 hhds. Muscovado Sugar for shipment per steamer *Centurion* from Porto Rico to New York at 3 1/16 cost, freight and insurance, payable on net landed weight, 3 days sight against shipping

documents. Basis of 89 % test, allowance at rate of 1033
1/32c. up or 1/16c. down per degree to 84° and
3/32c. from 84° on any marks below.

BOWERMAN BROS
per BOGART
Brokers.

Libellant's Exhibit No. 2.—February 16, 1894.

NEW YORK, 11th March, 1893.

THE AMERICAN SUGAR REFINING CO.

1034

Bought of BREGARO & CO.,
135 Pearl St.

Centurion.

Sold at			
890000	379 hhds. sugar weighing 632,184—		
Ave. 884525	78925=553259 nett at 3 1/16 89%....		$16,943 56
	1/16 allowance on 5475		189 31
5475			$16,754 25
890000	86 hhds. sugar weighing 144,818—18044=		
888338	126,774 at 3 1/16 89%. ...	$3,882 45	
	1/16 allowance on 1662.....	13 17	
1662			3,869 28
			$20,623 53
	E. & O. E. Draft.....		21,500 00 1035
			$876 47

Received Payment, 3/23/93.
$876.47.

THE AMERICAN SUGAR REFINING CO.,
Per BECKER.

1036 **Libellant's Exhibit No. 1.**—March 16, 1894.

RETURNS OF SUGAR—DAMAGED LOTS.

Marks.	Sound. No. of Hhds.	Gross Weight.	Damaged. No. of Hhds.	Gross Weight.
B1.....	87	147,128	47	65,172
B2.....	93	155,872	25	35,384
B3.....	16	27,356	1	1,595
B7.....	45	73,352	3	3,604
	241	403,708	76	105,756

TONS OF SOUND.

1037

	No. of Hhds.	Weight.
B1.....	10	2106
B2.....	10	2081
B3.....	2	423
B7.....	4	853
		5463

B1. 5 empty.
B2. 5 empty.

1038

At a Stated Term of the District Court of 1039
the United States for the Southern
District of New York, held at the Post
Office Building, in the City of New
York, on the 9th day of March, 1894.

Present—Hon. ADDISON BROWN, *District Judge.*

THE AMERICAN SUGAR REFINING COMPANY and JOSÉ BREGARO

AGAINST

The Steamer "CENTURION," &c. 1040

The libellants having moved to amend the libel and proceedings herein by including therein a claim for all sugar lost or damaged on the voyage mentioned in the libel and by increasing the amount of damages and for other relief, and said motion having come on to be heard, and the libellant having withdrawn said motion as to all matters included therein, except a motion to strike out the name of Jose Bregaro as co-libellant, after hearing William Parkin, of counsel for the libellants, J. Parker Kirlin, Esq., for the claimants, and George A. 1041
Black, Esq., for the New York and Porto Rico Steamship Company, the respondent; it is

Ordered, that the motion to strike out the name of Jose Bregaro as co-libellant be and hereby is granted.

ADDISON BROWN,
D. J.

(Endorsed)—Order.—Filed April 16, 1894.

350 **Notice of Motion.**

1042 U. S. DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

AMERICAN SUGAR REFINING COMPANY

vs.

The Steamship "CENTURION," THE NEW YORK AND PORTO RICO STEAMSHIP COMPANY.

1043 JOSE BREGARO

vs.

THE SAME.

Please take notice, that the New York and Porto Rico Steamship Company will move this Court at a stated term thereof, to be held at the Court Rooms in the Post Office building, in the City of New York, on April 24, 1894, at 11 A. M.,

(1.) That the petition herein be struck from the files for want of jurisdiction in this Court to entertain it.

1044 (2.) That the process issued against said company be set aside for want of jurisdiction in this Court to issue it.

(3.) That the answer of the said Company be amended so as to allege want of jurisdiction in this Court to entertain said petition or issue said process.

(4.) That such other relief be granted as may be proper.

Yours, &c.,

STEARNS & CURTIS,

Proctors for SS. Co.

To Messrs. MACFARLAND & PARKIN,

Proctors for Libellant.

Messrs. CONVERS & KIRLIN,

Proctors for Claimant.

(Endorsed)—Notice of Motion—Filed May 4, 1894

At a Stated Term of the District Court 1045
of the United States for the Southern
District of New York, held at the
Court Rooms in the U. S. Post Office
Building, in the City of New York, on
the 4th day of May, 1894.

Present—Hon. ADDISON BROWN, *District Judge.*

AMERICAN SUGAR REFINING CO.

vs.

The Steamship "CENTURION." 1046

In the Matter of the Petition of
John Blumer & Co. against
The New York and Porto
Rico Steamship Co.

JOSE BREGARO

vs.

The Steamship "CENTURION." 1047

In the Matter of the Petition of
John Blumer & Co. against
The New York and Porto
Rico Steamship Co.

The respondent, The New York and Porto Rico Steamship Company, having moved that the petitions herein be struck from the files for want of jurisdiction in this Court to entertain them; that

1048 the process issued against the respondent be set aside for want of jurisdiction in this Court to issue it; and that the answers of the respondent be amended so as to allege want of jurisdiction in this Court to entertain said petitions or issue said process. After hearing George A. Black, of counsel for the respondent, in support of said motions, and J. Parker Kirlin, Esq., of counsel for claimants, in opposition, it is

Ordered, that said motions be and hereby are denied.

ADDISON BROWN.

(Endorsed)--Order.—Filed July 12, 1894.

1049

U. S. DISTRICT COURT.

SOUTHERN DISTRICT OF NEW YORK.

AMERICAN SUGAR REFINING COMPANY

vs.

1050 SS. "CENTURION" and the NEW YORK AND PORTO RICO STEAMSHIP COMPANY.

Please take notice that upon the testimony taken before Edward L. Owen, Esq., Commissioner, on the reference to ascertain and compute the amount of the libellants' damages herein, to the effect that the sugar in the damaged hogsheads was not as hard as the sugar in the hogsheads which were not damaged, I shall move this Court at a Stated Term thereof,

to be held at the Court Rooms, in the Post Office 1051
Building, in the City of New York, on the 24th day of April, 1894, at 11 o'clock in the forenoon, for a reargument of this case, or, if such reargument be not granted, for an order directing that such testimony may be considered a part of the evidence upon the trial of the question of the liability of the claimants and respondent herein.

Dated April 17, 1894.

STEARNS & CURTIS,
Proctors for Respondent.

To Messrs. MACFARLAND & PARKIN,
Libellants' Proctors.
Messrs. CONVERS & KIRLIN, 1052
Claimants' Proctors.

(Endorsed)—Notice.—Filed May 4, 1894.

1053

1054 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

THE AMERICAN SUGAR REFINING COMPANY

vs.

The Steamship "CENTURION," her tackle, apparel and furniture.

1055

NOVEMBER 16, 1893.

APPEARANCES:

Mr. GEO. A. BLACK, for the Charterers, The N. Y. & P. R. S. S. Co.
Mr. WM. PARKIN, for the Libellant.
Mr. J. P. KIRLIN, for Claimant.
Mr. E. L. OWEN, Referee.

TESTIMONY on reference to ascertain damages on behalf of libellants taken before Edward L. Owen, Esq., United States Commissioner, at 71 Wall
1056 street, New York City.

CHARLES FREDERICKS, being duly sworn on behalf of libellant, by Edward L. Owen, United States Commissioner, did depose and say:

By Mr. Parkin:

Q. Mr. Fredericks, what is your business? A. Sugar sampler.

Q. And you are in the employ of the American Sugar Refining Company? A. Yes, sir.

Q. How long have you been in their employ? A. About 13 or 14 years.

Q. Your duties are to take samples of cargoes of 1057
sugar which come to the refinery? A. Yes, sir.

Q. And to give those samples to the mixer? A. Yes, sir.

Q. Did you take samples of any part of the cargo of the steamer *Centurion* which arrived in February last? A. I did; yes.

Q. Of what part of the cargo did you take samples? A. I sampled the sugar which came out of No. 2 hatch.

Q. Did you take samples of all the hogsheads of sugar that came out of that? A. Yes, sir.

Q. Sound and damaged, both? A. Yes, sir.

Q. What did you do with those samples? A. I took the samples over to the mixer here. 1058

Q. You put the samples in cans? A. Yes, sir.

Q. And those cans are labeled with the marks on the hogsheads? A. Yes, sir.

Q. And you did that in this case? A. Yes, sir.

Q. The same as you always do? A. Yes, sir.

CROSS-EXAMINATION by Mr. Black:

Q. How many hogsheads out of No. 2 hatch did you take samples of? A. Out of all, sir.

Q. How many? A. That I can't tell.

Q. Have you any record or recollection about that? A. No, sir.

Q. Were any of those hogsheads which you sampled from No. 2 hatch sound? A. Yes, sir. 1059

Q. Were any of them damaged? A. Yes, sir.

Q. Which was the most of them, damaged or sound? A. The sound.

Q. There were more sound than damaged? A. Yes, sir.

Q. Were there twice as many sound as damaged? A. I don't know; I can't tell.

Q. Did you sample as many as ten hogsheads from No. 2 hatch? A. I sampled more than that.

Q. Did you sample as many as 20? A. More than that.

Q. As many as forty? A. Yes, more than that.

1060 Q. As many as a hundred? A. More than that, sir.

Q. As many as two hundred? A. More than that, sir.

Q. As many as three hundred—more than 350 or 400, 450? A. I don't know; I can't tell you exactly how many; I know there were over 200.

Q. Tell me when you sampled the hogsheads were they lying on their bilges or on their heads? A. On their heads.

Q. And were the sound separate from the damaged? A. No, sir.

Q. Were they all mixed in together? A. Mixed in together.

1061 Q. Were the marks all mixed in together? A. Yes, sir.

Q. Tell me the way you take your samples; did you go from one hogshead to the next, or did you take out all of one mark before you sampled the others? A. We sample them the way they come out of the steamer.

Q. With what do you sample them? A. We generally bore them and take a long trier and run that trier through from head to head.

Q. Whereabouts do you bore them? A. Anywheres near the bilge.

Q. On the head or on the side? A. On the head.

Q. And what part of the head, the part that is
1062 uppermost or the part that is down? A. We bore a kind of slantways near the side at the side of the median line of the hogsheads horizontally.

Q. When you run your trier in do you run it in on the level or slant it in or what? A. We run it right down the way the hole is bored; we push the trier as to follow the way the hole is bored.

Q. Tell me what is the shape of that trier, what it is like? Is it as long as the hogsheads? A. Yes, sir.

Q. And is it as big round as the hole you bore? A. Yes, sir; about five foot long and an inch in diameter.

Q. And what shape is it? A. Hollow shape. 1063

Q. Like a gutter? A. Yes, just like a gutter.

Q. Do you turn it round after you put it in? A. Yes, sir.

Q. And when you pull it out does it come out full of the sugar all the length of it? A. Yes, sir.

Q. When you put it in the damaged sugar does the trier come out full all the length of it? A. Yes, sir.

Q. Even if the barrels are half full of molasses? A. I never sampled a hogshead where it was floating inside.

Q. Well, had you not a sample of the molasses where it was in the sugar? A. That is not floating in the sugar. 1064

Q. Does the molasses rest on the top of the sugar in the hogsheads or is it all mixed up with the sugar? A. It is all mixed up with the sugar.

Q. When you put the trier in the sound hogsheads does it go in hard? Do you push hard to get it in? A. Sometimes; yes.

Q. And when you push the trier into a damaged hogshead mixed up with the molasses, does it go in harder or not? A. No, sir; easier.

Q. Why does it go easier? A. Because the sugar is wet and soft.

Q. Were the sound hogsheads of sugar damp on this lot on the *Centurion?* Wasn't it muscovado sugar? A. Yes, sir. 1065

Q. Wasn't that damaged sugar? A. How do you mean damaged sugar?

Q. Not dry, like centrifugal sugar? A. Yes, sir; it is damper than the centrifugal.

Q. Then, if you took up some of the sound sugar and bruised it in your hand in a ball, could you make it stay together like a snow-ball? A. I don't know; I never tried.

Q. You know whether that which you pulled out in your trier was round like the core of a tube, or just filled up the trough part of the trier. Did it fill up the hollow part of the trier, or did it get all

1066 round, like a core or tube? A. Putting the trier into the hogsheads and draw it out, the sugar comes out loose and not in a circular form.

Q. When you put the trier into the damaged hogsheads, how did it come out then? A. Well, that comes out in a kind of tube that sticks more together.

Q. Well, if you had put what had come out of the damaged hogsheads in a kettle and some of what had come out of the sound in another kettle, which would come out first? A. The damaged sugar was not in such a state that it would run out. It was heavy, muggy sugar.

Q. But which would come out of the can first?
1067 A. I could not tell you.

Q. Suppose you had a hogshead of sugar with the head off of the sound and a hogshead of the damaged sugar and put your arm down through it, which would go down the easiest? A. I don't know.

Q. You know which the trier went down the easiest? A. It depends how soft the sound sugar was and how loose it was.

Q. Which could you put your arm down the easiest in the sugars of this vessel? A. The damaged, I suppose.

OLIVER SPITZER, being duly sworn on the part of
1068 the libellant by Edward L. Owen, Esq., United States Commissioner, did depose and say:

By Mr. Parkin:

Q. What is your business? A. I am superintendent of the dock of the American Sugar Refining Company, at the foot of South Fourth street.

Q. Have you charge of weighing of sugar which arrives at the docks? A. Yes, sir.

A. Have you the weights and tares of the sugar which arrived on the *Centurion* in February last, and which is known as the Gossler sugar? A. Yes, sir.

CROSS-EXAMINATION by Mr. Black: 1069

Q. Of the 82 hogsheads so-called damaged sugar from the Bregaro lot of 465 hogsheads, how many did you see the contents of? A. I don't remember.

Q. Did you see the contents of any of them. A. I did.

Q. Specify, as near as you can, how and when you saw the contents of them? A. I saw the contents of about twenty-five.

Q. Were those hogsheads whose heads were out at the time of their being taken from the ship, or whose heads were removed after they were on the dock, or some of both? A. Some of them came out of the ship with their heads out, and the others in shifting the hogsheads on the deck the heads fell out. 1070

Q. Did the 425 all have more or less in them? A. Yes, sir.

Q. What was the condition of those hogsheads which you saw? A. Not exactly liquid, but more so than the sound package.

Q. Did you see the contents of the sound packages there? A. That I can't remember.

Q. How many? A. I can't say.

Q. About? A. About one.

Q. Were those sound hogsheads opened, or had their heads also come out? A. They were being opened.

Q. In what manner did the contents of those sound hogsheads differ from the other hogsheads? A. The sound hogsheads were full, and the sugar was in a 1071 dry state.

Q. Were the contents of the sound hogsheads, as compared with the contents of the damaged hogsheads, so far as your observation led, any different except by the presence of more fluid in the damaged? A. The color was changed, and the sugar was soggy and heavy.

Q. Do you mean to say it would be harder to put your arm through it? A. It would be easier in the damaged hogsheads than in the sound hogsheads.

Q. And would that be equally true of a shovel or spade? A. Anything at all.

1072 At a Stated Term of the District Court of the United States for the Southern District of New York, held at the Court Rooms thereof, in the City of New York, on the day of May, 1894.

Present—Hon. ADDISON BROWN, *District Judge.*

AMERICAN SUGAR REFINING COMPANY

AGAINST

1073 The Steamship "CENTURION," &c.

In the Matter of the Petition of JOHN BLUMER & COMPANY

AGAINST

THE NEW YORK AND PORTO RICO STEAMSHIP COMPANY.

1074 The said New York and Porto Rico Steamship Company, having moved on the testimony of Oliver Spitzer and Charles Fredericks, examined on the reference to compute damages, to the effect that the sugar in the damaged hogsheads was not as hard as the sugar in the hogsheads which were not damaged, for a reargument, or if said reargument was refused that said testimony might be considered as a part of the evidence upon the trial of the question of the liability of the respondent herein: after hearing counsel for the respective parties, on motion of Convers & Kirlin, proctors for claimant, it is

Ordered, that said motion in both aspects be and 1075
hereby is denied.

ADDISON BROWN.

(Endorsed)—Order denying motion for reargument.
—Filed Sept. 21, 1894.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

AMERICAN SUGAR REFINING CO.

vs. 1076

The Steamship "CENTURION,"
The New York and Porto
Rico S. S. Co.

Please take notice that the New York and Porto Rico Steamship Company will move this Court at a Stated Term thereof to be held in the Post Office Building, in the City of New York, on the 24th day of April, 1894, at 11 o'clock in the forenoon, that the libel herein be dismissed on the ground that libellant has shown no title to or right of action herein, and 1077
by the striking out of Jose Bregaro as a party libellant by order herein there was left no party having a right of action.

Yours, &c.,

GEO. A. BLACK,
Proctor for S. S. Co.

To Messrs. MACFARLAND & PARKIN,
Proctors for Libellants.

Messrs. CONVERS & KIRLIN,
Proctors for Claimants.

(Endorsed)—Notice of motion.—Filed May 4, 1894.

1078 U. S. DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

AMERICAN SUGAR COMPANY

vs.

"CENTURION" and PORTO RICO STEAMSHIP COMPANY.

1079 The claimant excepts to the Commissioner's report in that he erroneously reported damages sustained by the libellant, whereas on the evidence adduced it appeared the libellant had no interest or property in the sugar, and no title or right of action herein.

CONVERS & KIRLIN,
For Clmt.

(Endorsed)—Clmt.'s Exceptions.—Filed May 4, 1894.

1080

At a Stated Term of the District Court of 1081
the United States for the Southern District of New York, held at the Court Rooms thereof, Post Office Building, New York City, on the 22d day of May, 1894.

Present—Hon. ADDISON BROWN, *Judge.*

AMERICAN SUGAR REFINING COMPANY

AGAINST

The "CENTURION." 1082

In the Matter of the Petition of JOHN BLUMER & COMPANY

AGAINST

The NEW YORK AND PORTO RICO STEAMSHIP COMPANY.

The respondent, the New York and Porto Rico 1083
Steamship Company, having moved to dismiss the libel on the ground that by the entry of an order striking out the name of Bregaro, as a party libellant, there was left no libellant entitled to recover, and said motions having come on to be heard, after hearing counsel for the respective parties, and due deliberation having been had, it is

Ordered, that said motion be, and hereby is, denied, and the claimants' exceptions in same matter are overruled.

ADDISON BROWN.

(Endorsed)—Order.—Filed May 22, 1894.

1084 At a Stated Term of the District Court of the United States for the Southern District of New York, held at the Court Rooms thereof, Post Office Building, New York City, on the 11th day of June, 1894.

Present—Hon. ADDISON BROWN, *Judge.*

JOSE BREGARO

AGAINST

1085 The "CENTURION."

In the Matter of the Petition of JOHN BLUMER & COMPANY

AGAINST

The NEW YORK AND PORTO RICO STEAMSHIP COMPANY.

The report of Edward L. Owen, Esq., the Commissioner to whom it was referred to ascertain and report the libellant's damages, having been filed, and
1086 exceptions thereto having been filed by the libellant and claimant and by the respondent, the New York and Porto Rico Steamship Company, and the matter having come on to be heard, and the Court having overruled the said exceptions, save as to the extent hereinafter allowed in respect to the exception of the New York and Porto Rico Steamship Company, and having adjudged that the average amount of wastage on arrival of casks of molasses is 21 gallons per cask, now, after hearing counsel for the respective parties, it is

Ordered, adjudged and decreed that the libellant is entitled to recover for 10,163 gallons of molasses

at 38 cents per gallon, and 4,440 gallons of molasses 1087
at 34 cents per gallon, Porto Rico currency, amounting together to the sum of $5,371.54 Porto Rico currency, said sum being the equivalent of $4,230.62 United States currency, together with interest from March 4th, said interest amounting at the date hereof to the sum of $322.23; also the sum of $212.10 costs as taxed, said sums together amounting to the sum of $4,764.95, and that the said steamship *Centurion*, her engines, &c., be condemned to pay the same.

And it appearing from the petition of the claimants and the proof offered in support thereof that the claimants of said steamer *Centurion* are entitled to be indemnified by the respondent, the New York 1088
and Porto Rico Steamship Company, it is

Ordered, on motion on Convers & Kirlin, proctors for said claimants, that the said New York and Porto Rico Steamship Company are hereby adjudged and decreed to pay the libellant's demands aforesaid, and that in default of such payment of any part of said sum by said company execution issue in favor of the claimants and against the New York and Porto Rico Steamship Company for such amount as is not paid by the said Steamship Company, and which the said claimants may pay under this decree, with interest; and it is further

Ordered, that unless an appeal be taken from this decree by the claimants or by said company respectively, within the time limited by the rules and 1089
practice of this Court, the stipulators for costs and value on the part of the claimants and said company respectively, cause the engagements of their stipulations to be performed, or show cause within four days after the expiration of said time to appeal, or on the first day of jurisdiction thereafter, why execution should not issue against their goods, chattels and lands for the amount of their said stipulations.

ADDISON BROWN.

(Endorsed)—Decree.—Filed June 11, 1894.

1090 At a Stated Term of the District Court of the United States for the Southern District of New York, held at the Court Rooms thereof, Post Office Building, New York City, on the 11th day of June, 1894.

Present—Hon. ADDISON BROWN, *Judge.*

AMERICAN SUGAR REFINING COMPANY

1091 AGAINST

"The CENTURION."

In the Matter of the Petition of JOHN BLUMER & COMPANY

AGAINST

The NEW YORK AND PORTO RICO STEAMSHIP COMPANY.

1092

This cause having been heretofore heard on the pleadings and proofs, and an interlocutory decree having been made by which it was referred to Edward L. Owen, Esq., to ascertain and report the amount of the libellant's damages, and said Commissioner having made and filed his report, dated April 13, 1894, by which he reports that there was due to the libellant for its damages the sum of $1,678.33, with interest from February 28, 1893, and exceptions thereto having been filed by the claimant, and said exceptions having been overruled, now

on motion of MacFarland & Parkin, proctors for the 1093
libellants, it is

Ordered, adjudged and decreed that the libellant, the American Sugar Refining Company, is entitled to recover against the steamship *Centurion*, her engines, &c., the sum of $1,678.33, with interest from February 28, 1893, being at the date hereof the sum of $129.79, amounting together to the sum of $1,808.12, together with the sum of $210.74, costs as taxed, the said several sums together amounting to the sum of $2,018.86, and that the said steamship *Centurion*, her engines, &c., be condemned to pay the same.

And it appearing from the petition of the claimants, and the proof offered in support thereof, that 1094
the claimant is entitled to be indemnified by the respondent, the New York and Porto Rico Steamship Company, it is

Ordered, on motion of Convers & Kirlin, proctors for said claimants, that said amount of $2,018.86 be paid by the said New York and Porto Rico Steamship Company, and that in default of such payment of any part of said sum, execution issue in favor of the claimants and against the New York and Porto Rico Steamship Co. for such amount as is not paid by the said steamship Co.; and it is further

Ordered, that unless an appeal be taken from this decree by the claimants within the time limited by the rules and practice of this Court, the stipulators 1095
for costs and value on the part of the claimants cause the engagements of their stipulations to be performed, or show cause within four days after the expiration of said time to appeal, or on the first day of jurisdiction thereafter, why execution should not issue against their goods, chattels and lands for the amount of their said stipulations.

ADDISON BROWN.

(Endorsed)—Decree.—Filed June 11, 1894.

1096 DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

JOSE BREGARO

vs.

The Steamship "CENTURION" her engines, &c.;

JOHN BLUMER & Co., Claimants.

1097

In the Matter of the Petition of JOHN BLUMER & Co.

AGAINST

The NEW YORK AND PORTO RICO STEAMSHIP COMPANY.

Sirs:

Please take notice that The New York and Porto Rico Steamship Company, respondent, appeals to
1098 the United States Circuit Court of Appeals for the Second Circuit from the final decree entered herein on the 11th day of June, 1894.

Dated June 21, 1894.

STEARNS & CURTIS,
Proctors for The New York & Porto Rico Steamship Company, Respondent.

To Messrs. MACFARLAND & PARKIN,
Proctors for Libellant.

Messrs. CONVERS & KIRLIN,
Proctors for Claimants.

SAMUEL H. LYMAN, Esq.,
Clerk.

(Endorsed)—Notice of Appeal.—Filed June 23, 1894.

DISTRICT COURT OF THE UNITED STATES 1099

FOR THE SOUTHERN DISTRICT OF NEW YORK.

AMERICAN SUGAR REFINING CO.

vs.

The Steamship "CENTURION," her engines, &c., JOHN BLUMER & CO.,

Claimants.

In the Matter of the Petition of JOHN BLUMER & CO. 1100

AGAINST

THE NEW YORK AND PORTO RICO STEAMSHIP COMPANY.

Sirs:

Please take notice that the New York and Porto Rico Steamship Company, respondent, appeals to the United States Circuit Court of Appeals for the Second Circuit from the final decree entered herein on the 11th day of June, 1894. 1101

Dated June 21, 1894.

STEARNS & CURTIS,
Proctors for The New York and Porto Rico Steamship Company,
Respondent.

To Messrs. MACFARLAND & PARKIN,
Proctors for Libellant.
Messrs. CONVERS & KIRLIN,
Proctors for Claimants.
SAMUEL H. LYMAN, Esq.
Clerk.

(Endorsed)—Notice of appeal.—Filed June 23, 1894.

1102 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

JOSE BREGARO

AGAINST

The Steamship "CENTURION," Blumer & Co., Claimants,

And the NEW YORK AND PORTO RICO STEAMSHIP COMPANY,
1103 Respondent.

Sirs,—Please take notice that the claimant in the above entitled cause hereby appeals to the United States Circuit Court of Appeals for the Second Circuit from the final decree made and entered herein in behalf of the libellant and filed in the office of the Clerk of this Court on the 11th day of June, 1894.

Yours, &c.,
CONVERS & KIRLIN,
Proctors for Claimants.

New York, June 23, 1894.

1104

To Messrs. MACFARLAND & PARKIN,
Proctors for Libellant.
GEORGE A. BLACK, Esq.,
Proctor for Respondent.
SAMUEL H. LYMAN, Esq.,
Clerk, &c.

(Endorsed)—Notice of Appeal.—Filed June 23, 1894.

UNITED STATES DISTRICT COURT, 1105

SOUTHERN DISTRICT OF NEW YORK.

THE AMERICAN SUGAR REFINING COMPANY

AGAINST

The Steamship "CENTURION," Blumer & Co., Claimants,

And the NEW YORK AND PORTO RICO STEAMSHIP COMPANY, Respondents. 1106

Sirs:

Please take notice that the claimant in the above entitled cause hereby appeals to the United States Circuit Court of Appeals for the Second Circuit from the final decree made and entered herein in behalf of the libellant and filed in the office of the Clerk of this Court on the 11th day of June, 1894.

Yours, &c.,

CONVERS & KIRLIN, 1107
Proctors for Claimants.

New York, June 23, 1894.

To Messrs. MACFARLAND & PARKIN,
Proctors for Libellant.
GEORGE A. BLACK, Esq.,
Proctor for Respondent.
SAMUEL H. LYMAN, Esq.,
Clerk, &c.

(Endorsed)—Notice of Appeal.—Filed June 23, 1894.

1108 U. S. DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

JOSE BREGARO

vs.

The "CENTURION."

1109

In the Matter of the Petition of JOHN BLUMER & CO.

vs.

The NEW YORK AND PORTO RICO STEAMSHIP COMPANY.

ASSIGNMENT OF ERRORS BY THE PORTO RICO STEAMSHIP COMPANY.

1110 I.—The District Court erred in entertaining the petition of John Blumer & Co. and in refusing to strike the same from the files for want of jurisdiction thereof.

II.—The District Court erred in refusing to set aside the process issued against the New York and Porto Rico Steamship Company.

III.—The District Court erred in holding that the injury to the cargo of libellant was not caused by sea perils.

III½.—The District Court erred in refusing to amend the answer of the New York and Porto Rico Steamship Company setting up want of jurisdiction. 1111

IV.—The District Court erred in rendering a decree against the New York and Porto Rico Steamship Company which was not asked for by the libellants and was not supported by any allegation of their libel.

V.—The District Court erred in rendering a decree against the New York and Porto Rico Steamship Company on motion of the proctors for the claimants of the steamship *Centurion*. 1112

VI.—The District Court erred in not dismissing the libel and petition herein.

Dated June 30, 1894.

STEARNS & CURTIS,
Proctors for New York and Porto Rico SS. Co.,
58 William Street,
New York City.

(Endorsed)—Assignment of Errors.—Filed July 3, 1894.

1113

1114 U. S. DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

AMERICAN SUGAR REFINING COMPANY

vs.

The "CENTURION."

1115

In the Matter of the Petition of JOHN BLUMER & COMPANY

vs.

The NEW YORK AND PORTO RICO STEAMSHIP COMPANY.

ASSIGNMENT OF ERRORS BY THE NEW YORK AND PORTO RICO STEAMSHIP COMPANY.

1116

I.—The District Court erred in entertaining the petition of John Blumer & Company, and in refusing to strike the same from the files for want of jurisdiction thereof.

II.—The District Court erred in refusing to set aside the process issued against the New York and Porto Rico Steamship Company.

III.—The District Court erred in holding that the injury to the cargo of libellant was not caused by sea perils.

IV.—The District Court erred in refusing to amend 1117
the answer of the New York and Porto Rico Steamship Company setting up want of jurisdiction.

V.—The District Court erred in rendering a decree against the New York and Porto Rico Steamship Company which was not asked for by the libellant and was not supported by any allegation of their libel.

VI.—The District Court erred in rendering a decree against the New York and Porto Rico Steamship Company on motion of the proctors for the claimants of the steamship *Centurion.*

1118

VII.—The District Court erred in not dismissing the petition herein.

VIII.—The District Court erred in holding that the injury to libellant's cargo of sugar was not caused as between the claimants and the New York and Porto Rico Steamship Company by the unseaworthiness of the steamship *Centurion.*

IX.—The District Court erred in refusing to receive the evidence of Oliver Spitzer and Charles Fredericks, taken before the Commissioner on the reference to ascertain damages, as evidence in the cause and to consider the same upon the merits 1119
thereof, and in refusing to rehear said cause and dismiss said libel upon such new evidence.

X.—The District Court erred in refusing to dismiss the libel on the ground that the bill of lading discharged the steamship company from liability for the loss and injury claimed, and that the payment of the insurance moneys to the libellant operated as a discharge of the liability, if any, of the steamship company.

1120 XI.—The District Court erred in refusing to dismiss the libel after Jose Bregaro had been struck out as a party libellant.

Dated June 30, 1894.

STEARNS & CURTIS,
Proctors for N. Y. and P. R. S. S. Co.,
58 William Street,
New York City.

(Endorsed)—Assignment of Errors.—Filed July 3, 1894.

CIRCUIT COURT OF APPEALS,

1121

SECOND CIRCUIT.

JOSE BREGARO

AGAINST

S. S. "CENTURION," John Blumer and Company, Claimants-Appellants.

In re Petition of John Blumer & Co.

1122

The claimants assign error to the final decision and decree of the District Court as follows:

1. For that the said District Court held that the injury to libellant's cargo was not caused by perils of the sea.

2. For that the Court held that the bills of lading, signed by the purser and the agents of the charterers, created a lien upon the steamship for the true and faithful performance of the contracts therein

contained, notwithstanding the provision in the 1123
charter party: "No claim to be made against owners for loss of cargo."

3. For that the Court held that recovery on the part of the libellant was not barred by the exception in the bills of lading against "leakage and breakage and damage from said causes."

4. For that the Court omitted to find that libellant's right to recover was defeated by its failure to allege and prove, as required by the bill of lading, that its claim for loss or damage accruing on the voyage was preferred at the office of the agents of the steamship at the port of destination 1124
within three days after delivery of the merchandise, in default whereof it was agreed by the bill of lading that claims for loss or damage should be deemed waived, and the steamship and the owners discharged therefrom.

5. For that the Court held that libellant's recovery was not defeated by the stipulation in the bills of lading, that the steamer should not be liable for damage capable of being covered by insurance when it appeared that there were policies upon this cargo, and that the losses were covered by the policies and paid.

6. For that the Court refused to hold that libellant 1125
should recover only half damages, because molasses was shipped in a dangerous condition—in a state of fermentation, with openings in the casks, through which fermenting molasses would naturally flow and cause the exterior of the cask to become slippery and move out of the position of original stowage; also because the said casks were not properly filled.

7. For that having found negligence on the part of the charterers and no fault on the part of the

1126 ship the Court, nevertheless, omitted to render a decree against the charterers in behalf of the libellants for the said damage; but, on the contrary, made a decree against the *Centurion* and her stipulators.

8. For that the Court entered a decree herein against the *Centurion* and her stipulators, on account of the matters alleged in the libel, with costs.

9. For that the Court omitted to dismiss the libel herein, with costs.

CONVERS & KIRLIN,
Proctors for Claimants.

1127 (Endorsed)—Assignment of Errors.—Filed Aug. 10, 1894.

CIRCUIT COURT OF APPEALS,

SECOND CIRCUIT.

AMERICAN SUGAR REFINING COMPANY

AGAINST

S. S. "CENTURION," John Blumer & Company,
1128 Claimants-Appellants.

In re Petition of JOHN BLUMER & CO.

The claimants assign error to the final decision and decree of the District Court, as follows:

1. For that the said District Court held that the injury to libellant's cargo was not caused by perils of the sea.

2. For that the Court held that the bills of lading, 1129
signed by the purser and the agents of the charterers, created a lien upon the steamship for the true and faithful performance of the contracts therein contained, notwithstanding the provision in the charter-party: "No claim to be made against owners for loss of cargo."

3. For that the Court held that recovery on the part of the libellant was not barred by the exception in the bills of lading against "leakage and breakage and damage from said causes."

4. For that the Court omitted to find that libel- 1130
ant's right to recover was defeated by its failure to allege and prove, as required by the bill of lading, that its claim for loss or damage accruing on the voyage was preferred at the office of the agents of the steamship at the port of destination within three days after delivery of the merchandise, in default whereof it was agreed by the bill of lading that claims for loss or damage should be deemed waived, and the steamship and the owners discharged therefrom.

5. For that the Court held that libellant's recov- 1131
ery was not defeated by the stipulation in the bills of lading that the steamer should not be liable for damage capable of being covered by insurance, when it appeared that there were policies upon this cargo, and that the losses were covered by the policies and paid.

6. For that having found negligence on the part of the charterers, and no fault on the part of the ship, the Court, nevertheless, omitted to render a decree against the charterers, in behalf of the libellants, for the said damage; but on the contrary, made a decree against the *Centurion* and her stipulators.

1132 7. For that the Court omitted to sustain the exception filed by the claimant to the Commissioner's report, alleging that the libellant was not entitled to recover any damages for the reason that it had no property in sugar at the time the cause of action alleged in the libel arose, and did not subsequently acquire such cause of action by assignment; and that by amendment to the libel, omitting the name of Bregaro as party libellant, the only party entitled to recover for the said damages was dropped from the case.

8. For that the Court entered a decree herein against the *Centurion* and her stipulators on ac-
1133 count of the matters alleged in the libel, with costs.

9. For that the Court omitted to dismiss the libel herein, with costs.

CONVERS & KIRLIN,
Proctors for Claimants.

(Endorsed)—Assignment of Errors.—Filed Aug. 10, 1894.

It is hereby stipulated that the foregoing shall constitute the record on appeal herein, and may be certified as such by the Clerk of the District Court.

MACFARLAND & PARKIN,
Proctors for Libellants.
1134
CONVERS & KIRLIN,
Proctors for Claimants.
STEARNS & CURTIS,
Proctors for Respondents.

UNITED STATES OF AMERICA, Southern District of New York, } ss.: 1135

JOSE BREGARO,
Libellant and Appellee,

vs.

The Steamship "CENTURION," her engines, &c., JOHN BLUMER & Co.,
Claimants and Appellants,

And the NEW YORK AND PORTO RICO STEAMSHIP COMPANY,
Respondent and Appellant. 1136

THE AMERICAN SUGAR REFINING COMPANY,
Libellant and Appellee,

vs.

The Steamship "CENTURION," her engines, &c., JOHN BLUMER & Co.,
Claimants and Appellants, 1137

And the NEW YORK AND PORTO RICO STEAMSHIP COMPANY,
Respondent and Appellant.

I, SAMUEL H. LYMAN, Clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the

1138 District Court in the above entitled cause made up pursuant to Rule No. 4 in Admiralty of the United States Circuit Court of Appeals for the Second Circuit.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 6th day of October, in the year of our Lord one thousand eight hundred and ninety-four and of the independence of the said United States the one hundred and nineteenth.

[SEAL.] SAML. H. LYMAN,
Clerk.

1139

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U. S. CIRCUIT COURT OF APPEALS, 1141

SECOND CIRCUIT.

AMERICAN SUGAR REFINING COMPANY

vs.

Steamship "CENTURION," NEW YORK AND PORTO RICO STEAMSHIP COMPANY, Respondent.

1142

JOSÉ BREGARO

vs.

SAME.

It is stipulated that the apostles be amended by inserting the process issued against the New York and Porto Rico Steamship Company in the above two causes; and that either party may refer to the diagram of said steamship *Centurion* put in evidence in the District Court. 1143

Nov. 26th, 1894.

MACFARLAND & PARKIN,
Proctors for Libellants.

CONVERS & KIRLIN,
Proctors for *Centurion*,
Claimant.

GEO. A. BLACK,
Proc. for N. Y. & P. R.
SS. Co.

1144 SOUTHERN DISTRICT OF NEW YORK, ss.:

THE PRESIDENT OF THE UNITED STATES OF AMERICA,
To the Marshal of the Southern District
[L. S.] of New York, Greeting: Whereas, a libel hath been filed in the District Court of the United States for the Southern District of New York, on the 9th day of March, in the year of our Lord one thousand eight hundred and ninety-three, by JOSÉ BREGARO against the steamship "CENTURION," her engines, &c., in a certain suit, civil and maritime, for damages therein alleged to have been sustained by the said libellant, amounting to three thousand ($3,000) dollars;

And whereas, a petition has been filed on the 12th
1145 day of April, A. D. 1893, by John Blumer & Co., claimants of the above named steamship, praying that process may issue against the New York and Porto Rico Steamship Company, citing it to appear and answer said petition, and that this Court will pronounce against said company instead of these petitioners in case the allegations of said libel be proved and sustained.

Now, therefore, we do hereby empower and strictly charge and command you, the said Marshal, that you cite and admonish the said respondent, if it shall be found in your district, that it be and appear before the said District Court on the 18th day of April, 1893, at the United States Court Rooms, in
1146 the United States Court and Post Office Building, in the City of New York, then and there to answer the said petition, and to make its allegations in that behalf; and you have then and there this writ with your return thereon.

Witness, the Hon. ADDISON BROWN, Judge of said Court, this 12th day of April, in the year of our Lord one thousand eight hundred and ninety-three, and of our Independence the one hundred and seventeenth.

SAML. H. LYMAN,
Clerk.

CONVERS & KIRLIN,
Proctors for Petitioners.

SOUTHERN DISTRICT OF NEW YORK, ss.: 1147

THE PRESIDENT OF THE UNITED STATES OF AMERICA,
To the Marshal of the Southern District
[L. S.] of New York, Greeting: Whereas a libel hath been filed in the District Court of the United States for the Southern District of New York, on the 9th day of March, in the year of our Lord one thousand eight hundred and ninety three, by THE AMERICAN SUGAR REFINING COMPANY against the steamship "CENTURION," her engines, &c., in a certain suit, civil and maritime, for damages therein alleged to have been sustained by the said libellant, amounting to two thousand five hundred (2,500) 1148 dollars.

And whereas, a petition has been filed on the 12th day of April, A. D. 1893, by John Blumer & Co., claimants of the above named steamship, praying that process may issue against the New York and Porto Rico Steamship Company, citing it to appear and answer said petition, and that this Court will pronounce against said company instead of these petitioners in case the allegations of said libel be proved and sustained.

Now, therefore, we do hereby empower and strictly charge and command you, the said Marshal, that you cite and admonish the said respondent, if it shall be found in your district, that it be and appear 1149 before the said District Court on the 18th day of April, 1893, at the United States Court Rooms, in the United States Court and Post Office Building, in the City of New York, then and there to answer the said petition and to make its allegations in that behalf; and you have then and there this writ with your return thereon.

Witness, the Hon. ADDISON BROWN, Judge of said Court, this 12th day of April, in the year of our Lord one thousand eight hundred and ninety-three, and

of our Independence the one hundred and seventeenth.

SAML. H. LYMAN,
Clerk.

CONVERS & KIRLIN,
Proctors for Petitioners.

(Endorsed)— U. S. Dist. Court, S. D. of N. Y.— American Sugar Refining Co. *vs.* SS. *Centurion*, her engines, &c.— Citations.—Convers & Kirlin, Proctors for Petitioners, 5 Beekman St.— United States Circuit Court of Appeals, Second Circuit.—Filed Nov. 26, 1894.—James C. Reed, Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS 1151

FOR THE SECOND CIRCUIT.

JOSÉ BREGARO

v.

The Steamship "CENTURION" and THE NEW YORK AND PORTO RICO STEAMSHIP COMPANY, impleaded.

1152

THE AMERICAN SUGAR REFINING COMPANY

v.

THE SAME.

Appeals from decrees of the District Court for the Southern District of New York in favor of the libellants against the steamship Centurion and its charterer for injuries to a cargo of sugar and molasses on board said ship. 1153

SHIPMAN, *C. J.*—José Bregaro shipped on board the steamship *Centurion* at Ponce, Porto Rico, 250 casks of molasses, and his agent shipped on the same steamer at Arroyo 465 hogsheads of sugar for transportation to New York. The bills of lading excepted the ship and its owners from liability for damage arising from perils of the sea. When the cargo was discharged in New York on March 3,

1154 1893, eighty-eight casks of molasses were broken and empty and others were partially empty from leakage. The sugar in the lower tiers of the hogsheads was partially dissolved by its mixture with the molasses which accumulated at the bottom of the hold. Bregaro brought a libel *in rem* against the *Centurion* for the damage to the molasses, alleging that it was caused by the negligent and improper manner in which the merchandize was stowed. Bregaro and the American Sugar Refining Company also libeled the steamship to recover damages for the injury to the sugar, alleging improper stowage and that through the defective condition of the scuppers, bilges and sluice-ways of the
1155 ship and the neglect of the officers to properly pump the vessel, the drainage from the sugar and the molasses collected in the lower hold and washed out the sugar from the hogsheads.

John Blumer & Co., the owners of the *Centurion*, answered the libels, alleging that the injuries happened through perils of the seas and denied that there was any defect in the stowage, but if there was they alleged that it was the fault of the New York and Porto Rico Steamship Company, the time charterer, which had the management and control of the stowage. The owners also filed petitions praying that the charterer might be cited in to answer the allegations of the petitions, which repeated,
1156 in substance, the averments of the answer in regard to the negligence, if any, of the charterer. The steamship company was cited in and appeared and answered the petitions. In regard to the injury to the molasses, it averred that the stowage was under the supervision of the officers of the vessel, was approved by them, was well done, and that the damage happened through perils of the seas.

In regard to the injury to the sugar, its answer contained the same averments in regard to stowage, and also averred that the damage was caused by the defects of the steamship's equipment and manage-

ment whereby the drainage from the sugar and the 1157
molasses accumulated and dissolved the sugar.

The causes went to trial under the issues as thus made and were heard upon depositions.

The *Centurion* was a steel ship, built in May, 1886, 270 feet long, with a depth of hold twenty-six feet and one inch, having two steel decks, the upper deck and the between decks, which were perfectly tight, except the closely covered feeder holes. Whether these holes were caulked at the time in question need not be determined, as it is manifest that they had nothing to do with any injury to this cargo.

She was chartered by the steamship company under a charter of demise; the captain was under its 1158
orders and directions, and as between shipowners and charterers, no claim was to be made against the owners for loss of cargo. A supercargo could be appointed by the charterer, who was to see that the voyages were prosecuted with the utmost dispatch. When she started upon this particular voyage she was clean, in good condition throughout and was entirely seaworthy. She took a general cargo in New York in January, 1893, for Porto Rico ports, and discharged and took in cargo at each port, when required. She reached San Juan on January 31st, and thereafter visited nine other ports, of which Ponce was the third, where she took in the molasses on or about February 9th, and discharged 1159
all her cargo. She received the sugar at Arroyo on February 13th, returned to San Juan on February 18th and sailed for New York on February 19th. The molasses was stowed in No. 2 "between-decks," the sugar was stowed beneath, in No. 2 hold and the stowage was made by an experienced stevedore under the supercargo's supervision and control and in the places of his selection.

In the afternoon of February 22nd there was a strong gale, with heavy squalls, and at half-past five o'clock a heavy sea struck the ship, heaving her temporarily at an angle of forty-five degrees,

1160 washing the deck cargo adrift and giving the ship a list to starboard of three and one-half feet, which she retained during the voyage. The next morning it was discovered that the molasses was adrift in the between decks.

The supercargo and the crew went down, found that part of the casks in both tiers were broken, that some of them were empty, and that they were generally out of position. They were shored up and secured as well as practicable. The bad weather continued, and on February 24th the sea swept the deck cargo overboard, broke some rails and did some other damage. She anchored at Staten Island in the evening of February 26th.

1161 On arrival at New York, the cargo was unloaded and the extent of the damage was ascertained. The leaking molasses had run down the scupper pipes into the bilges in hold No. 2 beneath; the bilges and the sluiceways in the bulkheads which separate the bilges became filled and choked with the accumulation of molasses; it flowed over upon the bottom of the hold, mixed with the leakage from the sugar hogsheads, caused more suger to be dissolved and soon the limbers were full of a thick mixture of sugar and molasses, which could not flow away. The sluiceways were left open, but were clogged with wet and soft sugar and molasses.

1162 It appears that the hogsheads in which Muscovado sugar is packed are intentionally not tight, but have four or five holes through which the hogsheads may be "purged," that the staves are loose and that the drainings settle in the bottom of the hogsheads. Molasses casks are not full when they are put on board, but five or six inches are left for fermentation, and each cask has two small holes, one on each side of the bung, to permit an escape of the fermenting molasses, which flows out through the holes and makes the casks very slippery and easily movable.

The issue of fact which was before the District Court was, whether the shifting of the molasses

casks which created, first, the damage to the mo- 1163
lasses and next the damage to the sugar, as the result of the drainage of the molasses, was caused by the perils of the sea, the defects of the ship, or by negligent and improper stowage.

Numerous criticisms were made by the charterer upon the alleged defects of the ship as to sluiceways, bilges, pumps and the negligence of the crew in pumping, but we are satisfied that these criticisms were groundless and may be eliminated from the case. The District Judge was of opinion that the shifting of the cargo arose "from the place and mode of stowage, and that the stowage was not reasonably sufficient to meet ordinary rough weather such as was to be reasonably anticipated and pro- 1164
vided for," and was further of opinion that "the weather was not extraordinary, and that before any rough weather was encountered, the movement of the casks in No. 2 between-decks was observed, which the supercargo sought to check." The conclusion was that the damage was the result of bad stowage, and inasmuch as between cargo owners and the ship the latter is liable for pecuniary loss from that cause, the decree in each libel ran against the shipowners, but inasmuch as between charterer and shipowners the charterer was liable to the owners, the decrees provided that the charterer should pay the amounts therein named. The shipowners and also the steamship company appealed 1165
from each decree, but upon different grounds. Our examination of the record has led us to conclusions of fact which differ from those of the District Judge.

In the original depositions which were given by the officers of the *Centurion*, the good character of the stowage was unanimously supported, and there was no attack or outspoken criticism upon the place of the stowage. It was not until the supercargo had testified that the place was selected by him after making inquiries of the captain and the mates as to the tightness of the between-decks, that any fault

1166 was found with his selection. The officers denied that this conversation took place, and the captain after testifying that he did not give the supercargo to understand that the between-decks were slack or likely to injure molasses, said that after and before the stowage he told the supercargo that if he (the captain) had been stowing the cargo he should not have put molasses in the between-decks, and gave him to understand that between-decks was not the proper way, by which he evidently meant place, to stow cargo. The captain's narrative of this conversation is so vague and general, that the utterance of his objections to the place of the stowage, at the time when utterance was important, must have been
1167 feeble, and the tardiness with which these conversations were brought into the case shows that they were not deemed of importance in its early preparation. We cannot concur in the full extent of the finding of the District Judge that the supercargo insisted upon stowing the molasses in the between-decks, contrary to the advice of the officers, for the preferences of the officers could not have been outspoken or positive. Furthermore, the positive testimony on the trial adverse to the suitableness of the place was also feeble. If the between-decks are tight, and in this vessel they were both tight and strong, the character of this part of the ship was not condemned by sailors or stevedores as a place for
1168 the stowage of liquids. A day or two after the vessel left Ponce and was on its way to another port, and before the cargo was all taken on board, the molasses casks moved and were examined and secured. This fact does not seem of especial significance, for there was no more trouble until the heavy storm of February 22nd. This storm appears both from the account given at the time, before the extent of damage to the cargo was known, and from the effect upon the vessel itself, to have been sufficiently severe and violent to create the injury to cargo, although sufficiently chocked and fastened to resist storms which might reasonably be anticipated.

If this case had been between the shipowners and 1169
charterer alone, and founded upon the liability of the charterer to indemnify the owners against loss to cargo resulting from its negligence, the testimony on the part of the ship would be most convincing against the theory of the charterer's negligence. It must be recollected that the case against the charterer derives no additional strength from the fact that the controversy is tripartite. The burden of proof is still upon the cargo owner or shipowner to establish the fact that the injury was caused by improper stowage, and this burden has been, in our opinion, imperfectly borne. If the shipowners presented, in reply to the charterer, testimony of importance showing that the injury 1170
happened by reason of negligent stowage, their witnesses had been, in their testimony in chief, so unanimous and harmonious in favor of the charterer, and had been so silent in regard to the impropriety of the location of the stowage, as to prevent a finding upon their testimony that there was a defect in either. The case then rests upon the conclusion to which the trier may come as to the extent of the peril. The District Court was of opinion that it was insufficient to cause properly stowed cargo to break loose, and therefore the stowage must have been insufficient.

We are constrained to the opinion that the stowage was affirmatively proved to have been proper, 1171
that the peril was sufficient to create and did create the damage to a properly stowed cargo, and that therefore the liability of the ship and her owners was within an exception in the bill of lading.

The decrees of the District Court are reversed, with costs of this Court to be equally divided between the two appellants.

WM. W. MACFARLAND,
For the Libellants.

J. PARKER KIRLIN,
For the *Centurion*.

GEO. A. BLACK,
For the New York and Porto Rico Steamship Company.

1172 At a stated term of the United States Circuit Court of Appeals for the Second Circuit, held at the Court Rooms thereof in the Post Office Building in the City of New York on the day of June, 1895.

Present—Hon. WILLIAM J. WALLACE,
Hon. E. HENRY LACOMBE,
Hon. NATHANIEL SHIPMAN,
Circuit Judges.

1173 JOSÉ BREGARO,
Libellant and Appellee,

AGAINST

The Steamship "CENTURION,"
JOHN BLUMER & COMPANY,
Claimant and Appellee,

AND

THE NEW YORK AND PORTO RICO STEAMSHIP COMPANY,
Respondent and Appellant.

1174 The separate appeals of the claimant and the respondent herein having come on for hearing in this Court, and having been argued by the advocates for the respective parties and submitted, and due deliberation having been had thereon;

Now, on motion of Convers & Kirlin, proctors for said claimants, and on motion of Stearns & Curtis, proctors for said respondent, it is

ORDERED, ADJUDGED AND DECREED that the decree of the District Court of the United States, bearing

date in its caption the 11th day of June, 1894, be 1175
and the same hereby is reversed and the libel of the said American Sugar Refining Company against the steamship *Centurion* is dismissed and the petition of John Blumer & Company, claimants of said steamship against the New York and Porto Rico Steamship Company, respondent, is also dismissed, with the costs of this Court to be equally divided between the two appellants; on the like motion it is further

ORDERED that a mandate issue from this Court to said District Court to enter a decree herein in accordance with this decision.

And it is further ordered that the petition for a 1176
rehearing be denied.

W. J. W.
E. H. L.
A. L.

1177

1178 At a Stated Term of the United States Circuit Court of Appeals for the Second Circuit, held at the Court Rooms thereof in the Post Office Building in the City of New York, on the day of June, 1895.

Present—Hon. WILLIAM J. WALLACE,
Hon. E. HENRY LACOMBE,
Hon. NATHANIEL SHIPMAN,
Circuit Judges.

1179 AMERICAN SUGAR REFINING COMPANY,
Libellant and Appellee,

vs.

The Steamship "CENTURION,"
JOHN BLUMER & COMPANY,
Claimant and Appellant,

AND

THE NEW YORK AND PORTO RICO STEAMSHIP COMPANY,
Respondent and Appellant.

1180 The appeals, separately taken, by John Blumer & Co., claimants of the steamship *Centurion*, and by the New York and Porto Rico Steamship Company, respondent, having come on for trial, and having been argued and submitted, and due deliberation having been had thereon; now, on motion of Convers & Kirlin, proctors for said claimants, and of Stearns & Curtis, proctors for said respondent, it is

ORDERED, adjudged and decreed that the decree of the District Court of the United States for the

Southern District of New York, bearing date in its caption the 11th day of June, 1894, be and the same is hereby reversed, and the libel of the said American Sugar Refining Company against the said steamship *Centurion* herein is dismissed, and the petition of John Blumer & Co., claimants of said steamship against the New York and Porto Rico Steamship Co., is hereby dismissed, with one bill of costs of this Court against the said libellant, to be divided between the said John Blumer & Co., claimant, and the said New York and Porto Rico Steamship Co., and with costs to the said claimant, John Blumer & Company, against the said libellant, The American Sugar Refining Company, of the said District Court, and that a mandate issue from this Court to said District Court to enter a decree herein in accordance with this decision. 1181 1182

And it is further ordered that the petition for a rehearing be denied.

W. J. W.
E. H. L.
N. J.

Sirs,—please take notice that the annexed proposed order for mandate will be presented to the Clerk of this Court at his office in the Post Office Building in the City of New York, for transmission to the Judges of the Circuit Court of Appeals, on the 5th day of June, 1895, at 10 o'clock A. M.

Yours, &c.,

1183

Proctor for Respondent and Appellant.

To Messrs. MacFarland & Parkin,
Proctors for Libellant and Appellee.

Messrs. Convers & Kirlin,
Proctors for Claimant and Appellant.

United States of America,
Southern District of New York, } ss.:

I, James C. Reed, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered